MANUAL FOR COURT REPORTERS AND RECORDERS

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Overview

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Section 1 Overview

Overview

1-01 INTRODUCTION

The court reporter or recorder is an integral part of the justice system; as such, she or he is subject to the requirements of court rules, statutes, and this manual. This person makes and maintains the verbatim permanent record of all proceedings. That permanent record must be a complete and accurate record. To perform this function the reporter or recorder must be competent, punctual, and willing to work long hours. Skills of a reporter or recorder include ability to report or log accurately and quickly; proficiency at transcribing; and expertise at spelling, punctuation, grammar, neatness, speed, and organization.

The reporter or recorder must be impartial, patient, dignified, and courteous and should conform personal conduct to high professional and personal standards. The reporter or recorder should be a respected citizen of good moral character and complete trustworthiness.

A. Code of Conduct

When working in the capacity of official court reporter or official court recorder, the reporter or recorder is an officer of the court and part of the court staff. He or she is subject to the same high standards of conduct above reproach, fidelity, and diligence that apply to the judge. He or she should always recognize that an independent and honorable court is indispensable to justice in our system. The judicial system is for the benefit of the litigant and the public, not the court or its staff.¹

As is stated in <u>The State Trial Judge's Book</u>², published under the sponsorship of the National Conference of State Trial Judges, the justice system requires that the reporter or recorder understands:

- 1. That the reporter or recorder of the court must reflect credit upon the court, the judge, and their profession, and that this extends to his/her personal, as well as official life.
- 2. That communications between the reporter or recorder and the judge are to be highly confidential.
- 3. That the reporter or recorder must respect the justice system at all times.
- 4. That the reporter or recorder should be punctual and efficient.

1-01-01 (9/99)

¹Code of Judicial Conduct, Canon 3.

²The State Trial Judge's Book, West Publishing Co., 2nd ed, pp. 11-12.

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5. That the reporter or recorder should not give advice to anyone concerning any matter in the court or which could end up in court.

- 6. That the reporter or recorder should never purport to speak or act for the judge where judicial matters are involved.
- 7. That, unless specifically authorized, the reporter or recorder should never exercise the court's discretion, as in excusing jurors or setting hearings.
- 8. That the reporter or recorder should not discuss the merits of any case.
- 9. That the reporter or recorder should be careful not to leave the impression with anyone that s/he could or would 'talk to the judge' about a case or that s/he knows 'what the judge is going to do'.
- 10. That the reporter or recorder should not express an opinion as to how a case should be decided or what verdict a jury will return. In other words, s/he should not take sides in any proceeding.
- 11. When working in the court, the reporter or recorder should not permit anyone to dictate anything into the record out of the judge's presence or without the judge's knowledge.
- 12. That the reporter or recorder should never improperly interpose himself or herself between the judge or others.
- 13. That the reporter or recorder must not neglect the work of the court in order to perform outside work.
- 14. If the reporter or recorder is an attorney, she or he is not to practice law in the court served as an official court reporter or official court recorder.
- 15. That the court reporter or recorder maintain notes and records, stenographic tapes, or discs in accordance with law and the Michigan Trial Court Case File Management Standards.
- 18. That if the reporter's or recorder's employment is terminated, she or he will promptly transcribe and deliver all notes, records, and completed transcripts as requested.

As an officer of the court, the reporter or recorder should always recognize that an independent and honorable court is indispensable to justice in our system. The judicial system is for the benefit of the litigant and public, not the court or its staff.¹ As a possessor of this manual, you are either a part of, or about to become a part of, the justice system. May you serve with honor and distinction.

¹Code of Judicial Conduct, Canon 1.

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B. Guidelines for Professional Practice

Common sense, professional courtesy, statutes and court rules should guide reporters and recorders in applying these guidelines.

In making the record the reporter or recorder should:

- 1. Accept only those assignments when their level of competence will result in the preparation of an accurate transcript. One should remove himself or herself from an assignment when one believes their abilities are inadequate, recommending or assigning another person if such person has the competence required for such assignment.
- 2. Prepare the record in accordance with transcript preparation guidelines established by statute, court rule, local custom and usage and this manual.
- 3. Notify, whenever possible, the parties engaging the reporter or recorder if a substitute reporter or recorder will be assigned.
- 4. Make timely delivery of transcript, meet promised delivery dates and make notification of delays.
- 5. Strive to become and remain proficient in your professional skills.
- 6. Keep abreast of current literature, technological advances and developments, and participate in continuing-education programs and professional organizations.
- 7. Cooperate with the bench and bar for improvement of the administration of justice.
- 8. Cooperate with qualified legal assistance organizations providing free legal services to the indigent as part of a commitment to the principle that legal services should be available to all. Such participation should be in accordance with the basic tenets of the profession: impartiality, competence and integrity.

C. Guidelines for Professional Ethics

A reporter or recorder shall:

- 1. Be fair and impartial toward each participant in all aspects of proceedings and always offer to provide comparable services to all parties in a proceeding.
- 2. Be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the reporter or recorder shall disclose that conflict or potential conflict.

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- 3. Guard against not only the fact but the appearance of impropriety.
- 4. Preserve the confidentiality and ensure the security of information, oral or written, entrusted to the reporter or recorder.
- 5. Be truthful and accurate when making public statements or when advertising qualifications or services provided.
- 6. Determine fees independently, except when established by statute or court order, entering into no unlawful agreements with anyone.
- 7. Refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, witnesses, insurance companies or any other persons or entities associated with a litigation, or to the representatives or agents of any of the foregoing, except for nominal items that do not exceed \$25.00 per transaction or \$100 in the aggregate per recipient each year.
- 8. Avoid being identified with controversies that would reflect negatively on the justice system or the reporting/recording profession.
- 9. Maintain a sincere and impelling interest in and support of the reporting/recording profession.
- 10. Abide by the Constitution and the laws of the United States and the State of Michigan.

Source Material:

The National Court Reporters Association Code of Professional Ethics National Stenomask Verbatim Reporters Association Member Handbook Code of Judicial Conduct, Canon 3 <u>The State Trial Judge's Book</u> MCL 600.1490; MSA 27A.1490 (rev. 6/01) Overview / 1-02-01

1-02 GENERAL INFORMATION

This chapter applies primarily to court employed reporters and recorders; however, all reporters, recorders, and operators are subject to the statutory and court rule requirements for certification and for producing transcripts and maintaining exhibits. Statutory requirements for freelance reporters/recorders and court reporting firms are outlined in Section 8-05.

A. Authority

1. Circuit Court

Each circuit court in this state shall have as many court reporters or certified court recorders as it has judges. [MCL 600.1101; MSA 27A.1101]

2. Probate Court

The probate judge or chief probate judge of any county or probate court district may appoint, and in counties having a population of 50,000 or more shall appoint, 1 or more official court reporters or certified recorders of the probate court. [MCL 600.835(1); MSA 27A.835(1)]

3. District Court

There shall be not less than 1 district court certified court recorder or court reporter for each judge of the district court. [MCL 600.8601; MSA 27A.8601]

Under Supreme Court rule, the chief or only judge of the district may appoint additional certified recorders and reporters. [MCL 600.8602(2); MSA 27A.8602(2)]

B. Appointment

1. Generally

Chief judges, collectively, are the employers of all the official reporters and recorders in this state. The authority and responsibility to "supervise the performance of all court personnel, with <u>authority to hire, discipline, or discharge such personnel</u>, with the exception of a judge's secretary and law clerk, if any" is vested in the chief judge (or single judge) by the provisions of MCR 8.110(C)(3)(d).

2. Circuit Court

According to statute, every reporter or recorder in the circuit court shall be appointed by the governor after having first been recommended by the judge or judges of the court to which s/he is appointed and s/he is an officer of that court. [MCL 600.1104; MSA 27A.1104] However, a governor has not appointed a court reporter or recorder since 1990.

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Instead, the court appoints court reporters and recorders in accordance with MCR 8.110(C)(3)(d).

3. Probate Court

The probate judge or chief probate judge of any county or probate court district appoints official court reporters and certified court recorders of the probate court. [MCL 600.835(1); MSA 27A.835(1)]

4. District Court

Each judge of the district court shall appoint his or her own reporter or recorder. [MCL 600.8602(1); MSA 27A.8602(1)]

The Court of Appeals has held that a district court judge has the right and the responsibility of selecting a court recorder at the beginning of the judge's tenure in office under MCL 600.8601 et seq. The court expressly declined to consider the <u>subsequent</u> removal of the court recorder by the judge who appointed him or her. [<u>Irons</u> v 61st <u>District Court Employees</u>, 139 Mich App 313 (1984)]

C. Qualifications

Only reporters or recorders certified under MCR 8.108 may record or prepare transcripts at proceedings held in Michigan courts or of depositions taken in Michigan. [MCR 8.108(G)] If a reporter or recorder will be swearing in witnesses, he or she must be a notary. [MCR 2.304]

D. Term of Office

1. Circuit Court

Every reporter or recorder shall hold office at the pleasure of the governor unless suspended for incompetency or misconduct, by the court to which s/he is appointed. In the case of a suspension, the reporter or recorder shall cease to hold the office of reporter or recorder unless by order of the court his or her suspension is rescinded. If the suspension is not rescinded within 30 days of the order of suspension, the office shall become vacant.

E. Oath of Office

1. Circuit Court

Before entering upon the duties of his or her office, the court reporter or recorder shall take and subscribe the constitutional oath of office which shall be filed in the office of the secretary of state. [MCL 600.1104; MSA 27A.1104]

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2. Probate Court

Upon appointment, probate court reporters and recorders shall take and subscribe the constitutional oath of office which shall be filed with the court clerk. [MCL 600.835(1); MSA 27A.835(1)]

F. Management of Court Reporter/Recorder Services

The chief or only judge of the court is charged with overall administrative responsibility for the employees of the court. This responsibility extends to effective management of the court's shorthand reporters or certified electronic recorders. The court should consider adopting written policies covering the following areas:

1. Transcript Production/Exhibits

a. Responsibility for Supervision of Court Reporters/Recorders

It is primarily the responsibility of every trial judge to make certain that the court reporter/recorder timely prepares and files transcripts and maintains exhibits. Ultimately, it is the responsibility of the chief judge pursuant to MCR 8.110 to make certain that trial judges and court reporters or recorders comply with the requirements for preparing and filing transcripts and maintaining and filing exhibits.

b. Responsibility of Court Reporter/Recorder

The court reporter's/recorder's responsibility for preparing and furnishing the transcript is set forth in MCR 8.108.

c. Priority of Transcript Production/Exhibits

Transcripts should be prepared in order of being ordered. Transcripts should be filed within the time limits prescribed by the Michigan Court Rules. [MCR 7.101(F) and MCR 7.210(B)] In the rare case in which the time limit cannot be met, the reporter or recorder shall file a motion for an extension of time in the appellate court. A copy of any motion for extension of time shall be provided to the chief judge and the court administrator if one (see SCAO Approved form, MC 503).

d. Show Causes

If a reporter/recorder is ordered by an appellate court to show cause why s/he should not be held in contempt of court for failing to file transcripts on a timely basis, the reporter/recorder shall immediately provide the chief judge and court administrator with a copy of the order.

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e. Pending Transcript Report

Reporters and recorders should be required to file a monthly pending transcript report with the chief judge or court administrator. This report should contain at least the following information:

- 1) name of case;
- 2) file number:
- 3) date ordered:
- 4) date reporter's certificate was filed;
- 5) due date;
- 6) estimated length of transcript;
- 7) "type" of case;
- 8) estimated completion date; and
- 9) show cause date (if applicable).

2. Suppressed Transcripts

"There appears to be no statute, court rule, or case law that sets forth the procedure to be followed with respect to the preparation and filing of a transcript of a closed hearing. As a practical matter, the best procedure for the judge is to identify on the record at the beginning and end of the record, the portion of the transcript that is to be suppressed. The suppressed transcripts should not be filed with the other transcripts. Rather, it should be sent directly to the appellate court with a letter of explanation. A copy of the letter should be maintained in the court reporter's or recorder's records. (see also Section 8-03, page 8-03-01)" [quote from Michigan Court Administration Reference Guide, Section 4-24, page 4-24-04]

3. Exhibit Maintenance

Exhibit maintenance is governed by MCR 2.518 and the Michigan Trial Court Case File Management Standards, Component 20, pages 30 and 31. As a general rule, exhibits are maintained by the court reporter during the trial. At the conclusion of the trial, the judge will either require the exhibits to be retained by the court reporter until the conclusion of the time period for taking an appeal as of right or returned to attorneys who offered into evidence. If an appeal is taken, the court reporter or recorder should either file the exhibits with the clerk of the court so that the clerk can comply with MCR 7.210(C) or file the exhibits with the appellate court.

4. Equipment and Supplies

The court may supply certain basic supplies and equipment to each reporter or recorder. Examples include: transcript paper, stenograph paper, transcript covers, ink, ribbons, exhibit stickers, miscellaneous office supplies, typewriter, dictating machine, and cassettes.

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1-03 RECORD MAINTENANCE

A. Records of the Court Reporter or Recorder

The court reporter or recorder who takes the testimony on the trial or the hearing of any case shall prefix the record of the testimony of each witness with the full name of the witness and the date and time the testimony was taken. At the conclusion of the trial of the case the reporter or recorder shall secure all of the records and properly entitle them on the outside, and shall safely keep them in his/her office.

B. Transfer of Records to Clerk of Court

If a court reporter or recorder dies, resigns, is removed from office, or leaves the state, his/her records in each case must be transferred to the clerk of the court in which the case was tried. The clerk shall safely keep the records subject to the direction of the court. The records are a part of the record of each case and are subject to inspection in the same manner as other records. On order of the court, a transcript may be made from the records and filed as a part of the record in the case. [MCR 8.108(D) and Michigan Trial Court Case File Management Standards, Component 11, pages 14 through 16]

The clerk of the court shall safely keep the records subject to the direction of the court. The records are part of the record of each case and are subject to inspection in the same manner as other records. [MCR 8.108(D) and Michigan Trial Court Case File Management Standards, Component 23, page 37]

C. Court to Retain Control Over Records of Reporters or Recorders

The clerk of the court shall safely keep the records subject to the direction of the court. The records are part of the record of each case and are subject to inspection in the same manner as other records. [MCR 8.108(D) and Michigan Trial Court Case File Management Standards, Component 23, page 37]

The court shall retain control over the records relating to any proceedings held in that court including those of court reporters and recorders who are not employed by the court. [Michigan Trial Court Case File Management Standards, Component 23, page 37]

[See Section 8-04, Maintaining Files/Records, page 8-04-01 and 8-04-02 for more details]

Section 2 Certification

Certification

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Certification

2-01 COURT REPORTING AND RECORDING BOARD OF REVIEW

A. Authority and Responsibility

1. Supervision of Certification Process

The Court Reporting and Recording Board of Review fulfills two basic roles delegated to it by the Supreme Court. First, the Board supervises and oversees the certification process. This includes setting policy regarding the examination process, providing policy direction to the State Court Administrative Office staff assigned to the Board, and deciding examination appeals and requests for extension of temporary certification. [MCR 8.108(G)]

2. Certification of Reporter or Recorder

The second major role assigned to the Board by the court is found in MCR 8.108(G)(6)(c). That rule delegates to the Board the responsibility to:

".... review the certification of a reporter or recorder and [to] impose sanctions, including revoking the certification, for good cause after a hearing before the board "

The chairperson of the board shall preside at the hearing or, in the event that the chairperson cannot preside, the chairperson may designate a member of the board.

3. Discipline of Reporter or Recorder

Although the Board has had very few formal disciplinary hearings, the volume of complaints by litigants and attorneys against reporters and recorders has increased. Many complaints involve failure to meet the time limits for filing transcripts in appeals established by MCR 7.210 et seq. Frequently, in those cases, the reporter or recorder has not sought an extension of time for filing the transcript as permitted by the court rules. [MCR 7.210(B)(3)(b)]

Other complaints concern disputes over the fees charged for transcripts. Many of these would be eliminated if reporters and recorders routinely obtained a written agreement from a party ordering a transcript which established an agreed price and a deadline for production.

2-01-01 (rev. 9/99)

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4. Enforcing Statutory Regulation of Freelance Court Reporter/Recorder and Court Reporting/Recording Firms

All court reporting firms and court reporters, recorders, and stenomask reporters, including out-of-state court reporting firms and court reporters, recorders, and stenomask reporters, shall register with the state court administrative office by completing an application in a form adopted by the state court administrative office. [MCL 600.1492(2)]

If a court reporting firm or a court reporter, recorder, or stenomask reporter fails to comply with this subsection, the state court administrative office may assess a reasonable administrative fine that is prescribed by rule of the supreme court, that does not exceed \$500.00, and that is payable to the state general fund. [MCL 600.1492(2)]

The state court administrative office is responsible for enforcing sections 1490, 1491, and 1492 through the court recording and reporting board of review or by other administrative means. [MCL 600.1493(1)]

Any violation of section 1490, 1491, or 1492 shall be cause for refusal of the state court administrative office's board of review to issue renewal certificates to certified court reporters, court recorders, or stenomask reporters. Any willful violation of section 1490, 1491, or 1492 shall be grounds for discipline or censure, or suspension or revocation of certification as a Michigan certified court reporter, court recorder, stenomask reporter, or court reporting firm. [MCL 600.1493(2)]

B. Organization

MCR 8.108(G)(2) outlines the organization of the Court Reporting and Recording Board of Review.

- 1. The Supreme Court shall appoint a Court Reporting and Recording Board of Review, composed of
 - a. a Court of Appeals judge, to be chairperson;
 - b. a circuit or recorder's judge;
 - c. a probate judge;
 - d. a district judge;
 - e. a court reporter who is an employee of a Michigan court;

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- f. a court recorder who is an employee of a Michigan court;
- g. a court reporter who is not an employee of a Michigan court;
- h. a court recorder who is not an employee of a Michigan court; and,
- i. an attorney.
- 2. Appointments to the board shall be for terms of 4 years. A board member may be reappointed to a new term. The Supreme Court may remove a member at any time.
- 3. If a position on the board becomes vacant because of death, resignation, or removal, or because a member is no longer employed in the capacity in which he or she was appointed, the board shall notify the Supreme Court Clerk and the Court shall appoint a successor to serve the remainder of the term.
- 4. The state court administrator shall assign a staff person to serve as board secretary.

To obtain a list of current Board members, please contact the Board Secretary at the State Court Administrative Office, P.O. Box 30048, Lansing, MI 48909, (517) 373-3727.

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2-02 RULES

Certification is regulated by Michigan Court Rule 8.108(G).

A. Certification Requirement

- 1. Only reporters or recorders certified pursuant to this subrule may record or prepare transcripts of proceedings held in Michigan courts or of depositions taken in Michigan pursuant to these rules. This rule applies to the preparation of transcripts of videotaped courtroom proceedings or videotaped or audiotaped depositions, but not to the recording of such proceedings or depositions by means of videotaping. A recorder holding a CEO certification under subrule (G)(7)(b) may record proceedings but may not prepare transcripts.
- 2. Proceedings held pursuant to MCR 6.102 or 6.104 need not be recorded by persons certified under this rule; however, transcripts of such proceedings must be prepared by court reporters or recorders certified pursuant to this rule.

[MCR 8.108(G)(1)(b)]

B. Certification by Testing

- 1. At least twice each year the board shall administer an examination testing knowledge and speed, and, as to a recorder, familiarity with basic logging techniques and transcript production. The board shall determine the passing score.
- 2. In order to be eligible for registration for an examination, an applicant must
 - a. be at least 18 years of age,
 - b. be a high school graduate, and
 - c. not have been under sentence for a felony for a period of two years.

In addition, an applicant for the certified shorthand reporter examination must have satisfactorily completed an approved, accredited, or recognized course of study in court reporting.

3. The registration fee is \$60.

[MCR 8.108(G)(3)]

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C. Reciprocal Certification

A reporter or recorder certified in another state may apply to the board for certification based on the certification already obtained. [MCR 8.108(G)(4)]

D. Temporary Certification

A new reporter or recorder may receive one temporary certification to enable him or her to work until the results of the next test are released. If the person does not take the test, the temporary certification may not be extended unless good cause is shown. If the person takes the test and fails, the board may extend the temporary certification. [MCR 8.108(G)(5)]

E. Renewal, Review, and Revocation of Certification

- 1. Certifications under this rule must be renewed annually. The fee for renewal is \$30. Renewal applications must be filed by August 1. A renewal application filed after that date must be accompanied by an additional late fee of \$30. The board may require certified reporters and recorders to submit, as a condition of renewal, such information as the board reasonably deems necessary to determine that the reporter or recorder has used his or her reporting or recording skills during the preceding year.
- 2. The board must review the certification of a reporter or recorder who has not used his or her skills in the preceding year, and shall determine whether the certification of such a reporter or recorder may be renewed without the necessity of a certification test.
- 3. The board may review the certification of a reporter or recorder and may impose sanctions, including revoking the certification, for good cause after a hearing before the board.
- 4. If, after a reporter's or recorder's certification is revoked or voided by the Board and a reporter or recorder applies to take the certification examination and passes, the Board may issue a conditional certification for a prescribed period of time invoking restrictions or conditions which must be met for continued certification. At the end of the conditional period, an unconditional certification may be issued.

[MCR 8.108(G)(6)]

F. Designations

The board shall assign an identification number to each person certified. A court reporter or recorder must place the identification number assigned on his or her communications with the courts, including certificates, motions, affidavits, and transcripts. The board will use the following certification designations:

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- 1. certified electronic recorder (CER);
- 2. certified electronic operator (CEO);
- 3. certified shorthand reporter (CSR);
- 4. certified stenomask reporter (CSMR).

The designations are to be used only by reporters or recorders certified by the board. A reporter or recorder may be given more than one designation by passing different tests.

[MCR 8.108(G)(7)]

G. Annual Schedule for Certification Examination and Renewal

1. Review of Examination

Deadline for reviewing October test - March 1 Deadline for reviewing April test - September 1

2. Registration for Certification Examination

Deadline for April examination - March 1 Deadline for October examination - September 1

3. Certification Examination Dates

CER/CEO Certification Examination - Third Saturday of April and October CSR/CSMR Certification Examination - Fourth Saturday of April and October

4. Certification Renewal

Deadline for certification renewal - August 1; applications received after August 31 are reviewed by the Board to determine if the applicant must sit for examination. Any renewal application received after August 1 must be accompanied by an additional late fee of \$30.

5. Challenging Examination

Deadline for challenging any portion of April examination - August 1 Deadline for challenging any portion of October examination - February 1 (7/97) Certification / 2-03-01

2-03 BOARD OF REVIEW POLICIES

A. Uncertified Reporter or Recorder Attempting to File Transcripts

(Adopted 6/24/80, Revised 7/83) [MCR 8.108(G)(1) and (3)]

Any uncertified person who files, attempts to file, or has anyone file a transcript on their behalf will automatically be precluded from taking the certification examination or from being granted temporary certification for a period of two (2) years from the date of the filing or attempted filing unless the Board determines that there is good cause for waiving any part or all of the two-year waiting period. This policy does not apply to previously certified reporters or recorders required to file a transcript of a proceeding reported or recorded while their certification was in effect.

B. Requirements for Registering for the Certification Examination

(Adopted 7/09/80, Revised 3/25/94, Revised 6/13/97) [MCR 8.108(G)(3)]

- 1. All persons registering for the court reporting or recording exam must:
 - a. be at least 18 years of age;
 - b. be a high school graduate;
 - c. not have been under sentence for a felony for a period of two years.
- 2. In addition, CSR applicants must have satisfactorily completed an approved, accredited, or recognized course of study in court reporting.
- 3. Effective immediately, certification examination applications received after the deadline of March 1 or September 1 will be returned to the applicants. Late applications will not be accepted. Further, applicants who arrive late at the examination site will not be allowed to interrupt the examination schedule of other applicants in order for them to take to the examination.

C. Certification of a Convicted Felon

(Adopted 1/30/80)

Certification as a court reporter or recorder under MCR 8.108 will not generally be granted to an individual who has been convicted of a felony, except as follows: an individual who has not been under sentence for a felony for a period of two years may make application to the Board.

2-03-02 / Certification (9/99)

D. Annual Certification Renewal

(Adopted 1/30/80, Revised 7/83, Revised 6/90, Revised 6/13/97) [MCR 8.108(G)(6)]

- 1. Certificates of court reporters and recorders shall be renewed each year.
- 2. Prior to July 1 of each year, the State Court Administrative Office (SCAO) will mail a notice of recertification to all currently certified court reporters and recorders. All certificates are valid through August 31 of each year.
- 3. An employment report must be filed by August 1 on a form approved by the Court Reporting and Recording Board of Review with the SCAO by all court reporters and recorders. Under MCR 8.108(G)(6) the fee for renewal is \$30. Applications for renewal received after August 31 must be presented to the Board of Review for action. Thus, any individual who does not file an employment report or affidavit by August 31 may be required to take the certification test before a valid certificate is reissued to him/her.
- 4. If an employment report or affidavit cannot be filed for the previous year, an individual holding a valid certificate may apply to the Board of Review for a determination of whether the certificate should be renewed without the necessity of taking the certification test. Any renewal application received after August 1 must be accompanied by an additional late fee of \$30.

E. Certification Reciprocity

(Adopted 1/30/80) [MCR 8.108(G)(4)]

Court reporters and court recorders certified to practice their profession in other states having a reciprocal certification agreement with Michigan may be certified by the Michigan Court Reporting and Recording Board of Review. Issuance of reciprocal certification is also subject to determination by the Board that the applicant's out-of-state certification is valid.

F. Temporary Certification

(Adopted 7/09/80, Revised 1/26/88, Revised 12/01/89, Revised 3/25/94, Revised 12/13/96, Revised 6/13/97, Revised 9/10/99) [MCR 8.108(G)(5)]

Temporary certification may be requested for an employee of a court or for an employee of a private reporting/recording firm if all of the following conditions are met:

1. For a Court Employee

a. The individual is or will be employed as a reporter/recorder by the requesting court;

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b. The employee is registered to take the next scheduled certification examination;

c. The judge avers that the applicant has the requisite skills and experience to fulfill the duties of official recorder and that the applicant will receive instruction from a Certified Electronic Recorder.

2. For an Employee of a Private Court Reporting/Recording Firm

- a. The individual is or will be employed as a reporter/recorder by the requesting reporting/recording firm;
- b. The employee is registered to take the next scheduled certification examination;
- c. The owner of the firm or at least one member of the firm requesting the temporary certification is currently certified as a reporter/recorder in Michigan.

3. Expiration of Temporary Certification; Limitations

Temporary certification of an individual is only valid in conjunction with work performed for the requesting court or reporting/recording firm. Termination of the individual's employment with the requesting party immediately invalidates temporary certification. It a temporarily certified applicant does not appear for the scheduled examination, temporary certification is automatically rescinded.

ALL TEMPORARY CERTIFICATIONS EXPIRE ON JUNE 30 (April exam) OR DECEMBER 31 (October exam) REGARDLESS OF WHEN ISSUED. Any use of a temporary certification identification number after the expiration date is unauthorized and fraudulent and is expressly forbidden. The only exception is for the preparation of transcripts that were reported during the temporary certification period.

Board staff is authorized to automatically approve two temporary certifications if received within an 18 month period. A third temporary certification may be issued by the Board when requested by an employer and IF THE APPLICANT HAS PASSED ONE PORTION OF THE CERTIFICATION EXAMINATION (either written or skills) AND HAS SHOWN SUBSTANTIAL OVERALL IMPROVEMENT IN TEST SCORES. Under extraordinary circumstances a fourth temporary certification may be approved by the Board but under no circumstances will there be more than four temporary certifications extended to any applicant. Applicants may take the examination as often as needed to pass; only temporary certification is limited.

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4. Denial of Temporary Certification

If the Board of Review at any time denies temporary certification, the individual will no longer be certified to record and/or file transcripts of proceedings held in Michigan courts until they successfully complete the certification examination requirements.

5. Fees

All registration fees for temporarily certified applicants are nonrefundable, nontransferrable, and nonapplicable to any examination other than the next scheduled examination the applicant has registered to take.

6. Responsibilities of the Requesting Judge or Reporting/Recording Firm

- a. It is the responsibility of the judge or reporting/recording firm to make a written request for the temporary certification of any individual in its employ.
- b. The examination registration form and registration fee for the individual should accompany the request unless it was previously submitted and/or is on file.
- c. If the temporarily certified individual leaves employment before becoming regularly certified, the employer should retrieve the identification card and return it to the Board.
- d. The employer is responsible for any work assigned while the individual is temporarily certified. If for any reason the applicant does not fulfill a transcription request, the employer shall be responsible for producing the transcript.

G. Procedures for Review of Certification

(Adopted 1/30/80, Revised 12/89, 6/91, 6/96) [MCR 8.108(G)(6)]

1. Complaint

- a. Any person may seek the revocation of certification of a reporter or recorder by addressing the Board in writing with details of specific misconduct.
- b. The Board secretary shall make a preliminary inquiry and direct the results to the chairperson for presentment on the Board's next agenda.
- c. If the Board determines that a formal complaint for hearing shall be made, notice shall be issued to the respondent.

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2. Notice

a. A respondent shall be given written notice of formal complaint for review of certification.

b. Notice shall include:

- 1) Date, hour, place, and nature of hearing;
- 2) Citation of statute, court rule, or published regulation of the Board alleged to have been violated:
- 3) A brief statement of the facts asserted.
- c. Notice shall be sent by first class mail. A certificate of mailing shall be prepared showing date of mailing.

3. Appearance at Hearing

- a. The respondent may be accompanied by counsel.
- b. If the respondent fails to appear after proper notice, the Board may proceed with the hearing and make its decision in the absence of the respondent.
- c. The respondent shall be given the opportunity to make a presentation in response to the complaint(s).

4. Hearings

- a. A quorum of the Board consisting of two-thirds of the members shall conduct the hearing on the complaint(s).
- b. The chairperson of the Board shall designate a Board member to preside at the hearing.
- c. Upon prior approval of the Board, the respondent and/or Board members may appear or participate through means of a conference telephone or other electronic communication equipment that permits all those appearing or participating to hear and speak to each other.
- d. The Board may, on its own initiative, direct that electronic communication equipment be used for a review of certification hearing.

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e. If a respondent, for good cause shown, needs to use electronic communication equipment, the respondent must make a written request at least 7 days before the hearing date. Respondent is responsible for any costs incurred for the use of the electronic communications equipment.

5. Decisions

- a. A decision will be made by a vote of a majority of the Board members present.
- b. Unless otherwise determined by the Board and notice given to all interested parties, the decision will be made and issued within 28 days, in writing, signed by the presiding officer, and shall include findings of fact, conclusions, and any sanctions imposed, including costs.
- c. The decision becomes effective 7 days after mailing. A certificate of mailing shall be prepared showing the date of mailing.
- d. A copy of the decision shall be mailed by first class mail to all interested parties.

H. Notice of Hearing

(Adopted [unknown], revised 6/21/96)

The following language will appear on the notice of hearing:

Please take note that a hearing pursuant to MCR 8.018(G)(6) will be held before the Michigan Court Reporting Board of Review to determine if there is good cause to impose sanctions against you up to and including revocation of your certification.

The hearing will be held at the State Court Administrative Office, 309 North Square, in the City of Lansing, County of Ingham, State of Michigan, on the 199_, commencing at o'clock, local time.	C
The above-named party(ies) may be accompanied by counsel at the hearing.	
Purpose of the hearing: To consider the following Complaint No(s) were previously mailed to your official address of record via first class mail.	which

Failure to appear may result in the imposition of sanctions up to and including revocation of your certification.

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I. Designations

(Adopted 1/30/80) [MCR 8.108(G)(7)]

The Court Reporting and Recording Board of Review has developed the following official designations for all certified individuals reporting courtroom testimony, utilizing a variety of reporting methods. They are as follows:

Acronym	<u>Title</u>	Method
CSR	Certified Shorthand Reporter	Pen, Stenotype Machine
CSMR	Certified Stenomask Reporter	Stenomask
CER	Certified Electronic Recorder	Electronic Recording
CEO	Certified Electronic Operator	Electronic Recording

J. Cheating on Examinations

(Adopted 11/22/85, Revised 6/11/93)

1. Statement of Policy

The Court Reporting and Recording Board of Review administers a variety of certification examinations. If an examination candidate is suspected of cheating, action will be taken as determined by the authorities administering the examination. The Board will be informed as soon as possible of the action(s) taken at the examination site. Any test candidate determined to have been cheating by the authorities administering the examination will automatically fail both portions of the examination and will not be allowed to take another examination for one year, and, if determined to have been cheating at any future examination, the test candidate will be barred from taking any future examinations. A new designation of "disqualified" is adopted in addition to the "pass" and "fail" designations. The employer of a temporarily certified candidate who has been disqualified will be notified.

2. Purpose

The purpose is to provide direction to test administrators on preventing and handling suspected cheating at exam sites. It is the intent of this document to define cheating, to provide methods which would reduce the possibility of such, and to delineate the steps to be taken if such were suspected. This policy is needed to attain consistency in all testing situations.

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3. Definition Of Terms

a. <u>Cheating</u>: Any activity, behavior or procedure employed by certification candidates which would enable them to pass an examination by dishonest, fraudulent, or deceitful means. Examples of such would be, <u>but are not limited to</u>, obtaining answers from another person's answer sheet, using prepared notes during the examination, discussing the examination with others prior to completing the examination, referring to textbooks, or having someone else take the examination for the individual.

- b. <u>Test Administration Supervisor</u>: An individual staff member of the State Court Administrative Office, an authorized person appointed by the Board of Review, or an authorized Board member, shall serve as the principal on-site coordinator of the test administration.
- c. <u>Monitor or Proctor</u>: Individual selected by the SCAO or Board to assist in the supervision of the test administration. These persons may be departmental staff, outside individuals paid specifically for the job, professionals who have volunteered to assist, or Board members.
- d. <u>Pre-Certification Examination</u>: A written and practical exam which must be successfully completed prior to issuance of a certificate.

4. Policy Specifications

The following policies will be enforced during all examinations administered by the Board.

- a. All candidates must present a signed photo ID prior to admission; if none is shown, candidates will not be allowed to take the exam.
- b. No candidate will be admitted after the exam has begun.
- c. Any of the candidate's personal material (books, notes, briefcases) must be kept at a location specified by the Test Administration Supervisor and not brought to the candidate's seat. The only exception will be those exams which permit textbooks.
- d. No candidate will be allowed to take notes or make copies of the exam questions.
- e. Any candidate who is suspected of cheating may be removed from the examination by the Test Administration Supervisor.

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5. Reasons for Suspicion

In order for a candidate to be suspected of cheating, it would be either because the Test Administration Supervisor or monitor witnessed something unusual, or because another candidate registered a complaint.

K. CEO Renewal Application

(Adopted 06/28/88, Revised 1/05/94, Revised 6/10/94)

Upon application for renewal, the applicant should provide the following information:

In a designated area on the renewal form, the chief judge or judge will aver by affixing his/her signature that the renewing applicant has utilized the CEO skills for a minimum of 10 hours (over the previous year) and the individual has the requisite skills to continue certification. In another designated area of the renewal form, the applicant will aver that the requisite skills have been maintained and s/he continues to comply with the applicable sections of the Manual for Court Reporters/Recorders.

L. Certified Electronic Operator (CEO) Designation

(Adopted 01/25/89)

The CEO designation is restricted to persons employed by the court.

M. Transcript Fees

(Adopted 9/90)

. . . Any freelance reporter/recorder acting as an official reporter/recorder working in the courtroom may only charge the statutory page rate for transcripts produced as a result of ordinary court work. This does not apply to a request for extraordinary, expedited, or daily copy. However, we have not precluded Michigan courts from negotiating contractual agreements with freelance reporters/recorders to cover expenses not contemplated by the per page statutory fee. (see also Section 4-01, page 4-01-03)

N. Validity of Skills or Written Knowledge Examination Scores for Partial Testing (Adopted 3/12/93)

Examination passing scores for either the skills or written knowledge portion of certification examinations will be valid for a period of 18 months or three tests. If the candidate has not attempted to pass the remaining portion of the examination during that period, the applicant will be required to take the entire examination in order to become certified.

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O. National Court Reporters Association Certification Examination (Adopted 3/25/94)

Effectively immediately, the Michigan Court Reporting/Recording Board of review accepts the skills portion of the National Court Reporters Association RPR certification examination toward State of Michigan CSR certification. Upon receipt of documentation from the National Court Reporters Association that an applicant for Michigan certification has passed the RPR examination and is a member in good standing of that association with a request from an applicant for reciprocal recognition of that certification, the Board will waive the skills portion of the Michigan CSR. The applicant must pass the written knowledge portion of the CSR Michigan examination to become fully certified.

P. Skills Examination Grading Scale

(Adopted 3/25/94)

Effective for the October 1994 examination, the Michigan Court Reporting/Recording Board of Review adopted the skills examination grading scale proposed by the Michigan Electronic Reporters Association. That grading scale permits 75 errors with the following breakdown: no title page, deduct 15 points; no table of contents, deduct 3 points; no certificate page, deduct 8 points; deduct 1 point for each misspelled word, each wrong word, or each missing word. Additionally, points will be deducted for deviation from the prescribed format as found in the Michigan Manual for Court Reporters and Recorders.

Q. Penalties for Taking Depositions When Noncertified

(Adopted 6/13/97)

Possible penalties for a noncertified reporter taking depositions after January 1, 1998 include:

- 1. publishing of the reporter and firm name in the Lawyers Weekly and possibly the State Bar Journal as being in violation of MCR 8.108.
- 2. placing the certification of the firm owner in jeopardy for using uncertified reporters in contravention of MCR 8.108.
- 3. recommending to the bench that depositions prepared by uncertified reporters not be accepted for filing in court proceedings.
- 4. the reporter and/or firm owner repay the cost of the deposition taken by an uncertified reporter to the ordering party.
- 5. any other disciplinary action appropriate to the circumstances.

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R. Adoption of Manual for Court Reporters and Recorders as Official Directive (Adopted June 12, 1998)

Pursuant to the authority vested in the Michigan Court Reporting and Recording Board of Review by MCR 8.108, and in furtherance of its responsibility to provide criteria for the certification of court reporters practicing in the State of Michigan, we hereby reaffirm our adoption of the Michigan Court Reporter Manual as the official directives of the Board of Review for providing criteria for court reporters to be used in conjunction with any regulations imposed by statute or court rule.

S. Public Attendance at Board Meetings

(Adopted June 12, 1998)

The Michigan Court Reporting and Recording Board of Reviews notes Administrative Order 1997-11, effective February 2, 1998, wherein it appears that the Michigan Court Reporting and Recording Board of Review is a working group created by the Michigan Supreme Court to advise the State Court Administrative Office and the Michigan Supreme Court on matters significantly affecting the delivery of justice; and as such, the Board may be required to provide an opportunity for public attendance at one or more meetings.

Pursuant to Administrative Order 1997-11, the Board hereby designates a quarterly meeting of the Board of Review as a public meeting to provide an opportunity for public attendance. For 1998, the designated meeting is September 11, 1998.

T. Continuing Education

(Adopted June 12, 1998)

The Michigan Court Reporting and Recording Board of Review acknowledges the Michigan Association of Professional Court Reporters' request to mandate continuing education credits as a requirement for certification renewal.

The Board supports and encourages professional excellence within the profession of Court Reporting. However, the Board is not in a position to support, authorize or regulate a mandatory requirement of continuing education credits as a part of certification renewal, but leaves the task of organizing continuing education to the appropriate professional associations.

Section 3 Transcript Format

Transcript Format

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Transcript Format

3-01 GENERAL INFORMATION

A. Scope of Transcript

1. Verbatim Record

McLouth Steel v Anderson Corp., 48 Mich App 424, (1973), 429 footnote 1 states:

"We emphasize that court reporters and stenographers are bound to make a <u>verbatim record</u> of the proceedings. GCR 1963, 915.2. A judge should not in any way interfere with or cause alteration of the true record as reported by the court reporter. In addition, a court reporter should not, <u>even on the order of a judge</u>, strike from the record that which actually took place. Any deviation in a transcript or certified record stultifies appellate review."

2. Stricken Testimony

Stricken testimony is transcribed as any other testimony. Even though the judge might say, "Reporter, please strike that last answer, and the jury is to disregard what the witness said," the reporter transcribes the entire proceeding <u>exactly</u> as it took place.

3. Expunged Testimony

Expunged testimony is transcribed as any other testimony. Even though the judge might say, "Reporter, please expunge that last answer, and the jury is to disregard what the witness said," the reporter transcribes the entire proceeding exactly as it took place.

4. Suppressed Transcripts

"There appears to be no statute, court rule, or case law that sets forth the procedure to be followed with respect to the preparation and filing of a transcript of a closed hearing. As a practical matter, the best procedure for the judge is to identify on the record at the beginning and end of the record, the portion of the transcript that is to be suppressed. The suppressed transcripts should not be filed with the other transcripts. Rather, it should be sent directly to the appellate court with a letter of explanation. A copy of the letter should be maintained in the court reporter's or recorder's records. (see also Section 8-04, page 8-04-01)" [quote from Michigan Court Administration Reference Guide, Section 4-24, page 4-24-04]

3-01-01 (7/97)

B. Form of Transcript

Court reporters and recorders must follow the format prescribed by the State Court Administrative Office as published in this manual. [MCL 600.2510(2)]

1. Assembling the Transcript

The transcript must be filed in one or more volumes under a hard-surfaced or other suitable cover, stating the title of the action, and prefaced by a table of contents showing the subject matter of the transcript with page references to the significant parts of the trial or proceedings, including the testimony of each witness by name, the arguments of the attorneys, and the jury instructions. The pages of the transcript must be consecutively numbered on the bottom of each page. Transcripts with more than one page, reduced in size, printed on a single page are permitted and encouraged, but a page in that format may not contain more than four reduced pages of transcript. [MCR 7.210(B)(3)(d)]

2. Page Definition

A transcript page is defined in MCL 600.2510(1). When used as a measure for computing fees or compensation, "page" is defined as follows: a page shall consist of 25 lines written on paper 8 1/2 by 11 inches in size, prepared for binding on the left side, with 1 3/8 inch margin on the left side and 3/8 inch margin on the right side. Typing shall be 10 letters to the inch.

3. Prescribed Page Format

Under MCL 600.2510(2) a page prepared in accordance with the format prescribed by the state court administrative office shall be counted, billed, and paid for as a full page. (See Section 3-02, pages 3-02-01 through 3-06-06 for examples.)

4. Title Page

[MCR 2.113(A)(B)(C), 7.210(B)(3)(d)]

- a. A title page is the first page of every transcript and shall be so numbered at the bottom center of the page.
- b. Each day of proceedings begins a new volume of transcript. Each volume begins with a title page.
- c. A title page includes the following information:
 - 1) The name of the court:
 - 2) The names of the parties or the title of the action;

- a) The names of the parties are in "caps."
- b) In words like "Plaintiff," "Defendant," "In the matter of," only the first letter is capitalized.
- 3) The case number, including a prefix containing the last two digits of the year of filing and the case-type code; (MCR 8.117; Michigan Trial Court Case File Management Standards, Components 1 and 2, pages 3 and 4)
- 4) The nature of the proceedings transcribed;
- 5) The name and title of the person who presided over the proceedings;
- 6) The names, business addresses, telephone numbers, and state bar numbers of all attorneys, and the name, address, and telephone number of any party appearing in pro per;
- 7) The name, certification designation and number, and telephone number of the reporter, recorder, or operator who has taken and/or transcribed, or caused to be transcribed, the proceedings.

(See Section 3-02, pages 3-02-01 through 3-02-05 for examples.)

5. Table of Contents Page

[MCR 7.210 (B)(3)(d)]

- a. Each transcript on appeal must include a table of contents page. Each table of contents page must list the witnesses and the exhibits. Even if there are no witnesses or exhibits, a table of contents page must be included.
- b. Each day of proceedings begins a new volume of transcript. Each volume must include its own table of contents.
- c. Showing the page number where the exhibit was first identified is helpful to the reviewer in indicating the first place in the transcript where the exhibit might have been mentioned.
- d. When a deposition transcript is read into the record in lieu of the personal appearance of a witness, it should be included in the table of contents, including the name of the witness and the page number at which the reading began.

(See Section 3-03, pages 3-03-01 through 3-03-07 for examples.)

6. Transcript Page

[MCL 600.2510]

- a. A transcript page contains twenty-five (25) typed lines on standard eight and one-half by eleven inch (8 1/2" x 11") paper with numbered lines.
- b. Typing shall be 10 characters to the inch.
- c. The left-hand margin of all transcripts is set at one and three-eighths inch (1 3/8"). The right-hand margin is set at three-eights inch (3/8").
 - 1) Left-hand margin
 - a) Q and A begins at the left-hand margin. There are five (5) spaces from the margin to the text; that is, the text begins on the sixth space. A carry-over line begins five (5) spaces from the left-hand margin; that is, it begins on the sixth space.
 - b) Colloquy begins fifteen (15) spaces from the left-hand margin; that is, it begins on the sixteenth space. A carry-over line begins five (5) spaces from the left-hand margin; that is, it begins on the sixth space.
 - c) Quoted material begins fifteen (15) spaces from the left-hand margin. A carry-over line begins ten (10) spaces from the left-hand margin. A new paragraph of quoted material begins fifteen (15) spaces from the left-hand margin.
 - d) Parenthetical material begins fifteen (15) spaces from the left-hand margin. A carry-over line begins fifteen (15) spaces from the left-hand margin.
 - e) New paragraphs begin fifteen (15) spaces from the left-hand margin.
 - 2) The right-hand margin is observed in every instance.
- d. The time that certain events take place is to be included in every transcript. Those events are:
 - 1) The time the proceedings begin and conclude.
 - 2) The time each witness is sworn and excused.
 - 3) The time of any adjournments/recesses.

- 4) The time each exhibit is marked and admitted.
- 5) The time a jury is sworn, charged, excused to deliberate, or returns to the courtroom for any reason.

(See Section 3-04, pages 3-04-01 through 3-04-12 for examples.)

7. Transcript Certificate Pages

All cases transcribed must end with a transcript certificate page. The purpose of the certificate is to signify the end of the transcript and to indicate that the transcript is a complete and accurate record of the court proceeding ordered transcribed. The certificate page does not need to be a separate page but may be included at the last transcript page if there is adequate room.

(See Section 3-05, pages 3-05-01 through 3-05-02 for examples.)

C. Style of Transcript

1. Standard Record

Transcribed material consists of two basic styles or forms:

a. Colloquy

Colloquy is conversation between anyone other than a witness and the examining attorney. The typical court hearing begins with colloquy between the judge and the attorneys. The witness is then sworn, and one attorney begins questioning the witness. In colloquy, the judge is always identified as THE COURT, an attorney is always identified by his or her name, and the witness is identified as THE WITNESS.

b. Question and Answer

Question and answer (Q and A) testimony is conversation between the witness and examining attorney. Whenever a witness is sworn, the questioning is set up as Q and A. It is optional to type a period (.) after each "Q" and "A". Any answer following the designation "A" must be preceded by a question, "Q". Q and A must be a sequence. Whenever Q and A is interrupted by any colloquy, tab to the "colloquy stop" (15 spaces from the margin), identify the speaker, follow the name with a colon, and begin typing the statement.

If the witness answers a question during colloquy, the response is colloquy. Q and A is always preceded by the name of the questioning attorney, i.e., BY MR. SMITH:

2. Separate (or Special) Record

Separate records are transcribed as any other testimony. A judge may say "Recorder, this is a separate record." A separate record is a part of the original day's proceeding, and must be bound with that day's proceedings. A separate record is prepared as follows:

- a. When you have determined the last spoken word of the regular record, place three dashes in the center of the page.
- b. Use no parenthetical remark.
- c. Start new page.
- d. Continue pagination through separate record.
- e. Place the words SEPARATE RECORD in all caps above line one, with one space between each letter, at the center top of each page of separate record.
- f. At top of first page of separate record, below the words SEPARATE RECORD, use the following parenthetical remark: "(At [time] Beginning of Separate Record)".
- g. Continue separate record for as long as necessary.
- h. At the end of the separate record, use the parenthetical remark "(At [time] End of Separate Record)."
- i. Put three dashes in the center of the page.
- j. Start a new page.
- k. Use no parenthetical remark to resume regular record.
- 1. Continue pagination from the separate record when going back into the regular record.
- m. Table of Contents page must show separate record as follows: Separate Record pages 26 through 35

D. Procedure for Questioning Witnesses

The following is the general procedure for the questioning of witnesses, however, the Michigan Rules of Evidence (611) directs the court to exercise reasonable control over the mode and order of interrogating witnesses.

1. Direct Examination

The first questioning of a witness by the party on whose behalf the witness is called.

2. Cross-Examination

The first questioning of a witness by the party opposed to the party who called the witness.

A witness may be called as an adverse witness under the statute for cross-examination (MCL 600.2161; MSA 27A.2161). That witness is then cross-examined by all parties.

3. Redirect Examination

Redirect Examination follows cross-examination. Redirect examination is the subsequent questioning of a witness by the party on whose behalf the witness is called.

4. Recross-Examination

Recross-examination follows redirect examination and is the subsequent questioning of a witness by the party opposed to the party who called the witness. This procedure is followed with every witness until the prosecutor or plaintiff rests. The defendant may, at that time, call witnesses on his behalf. The above procedure is again followed with every witness until the defendant rests.

5. Rebuttal

If, during the presentation of the defendant's case, new matter is brought out by the defense attorney, the prosecution/plaintiff may introduce evidence intended to contradict or rebut this new matter.

E. Parenthetical Expressions

Parenthetical expressions are brief descriptions of events happening in the courtroom. They are preceded by the time of the occurrence, if applicable, and enclosed in parentheses. All parenthetical expressions begin 15 spaces from the left-hand margin. Any carry-over line is to begin 15 spaces from the left-hand margin.

Examples:

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(At 9:15 a.m., prospective jury panel sworn)
(At 10:00 a.m., court recessed)
(At 10:30 a.m., court reconvened)
(At 10:45 a.m., PX#1 marked)
(At 11:00 a.m., bench conference on the record)
(At 11:05 a.m., bench conference concluded)
(At 11:45 a.m., conference in chambers)
(At 11:50 a.m., court reconvenes, all parties present)
(At 1:00 p.m., witness excused)
(At 3:00 p.m., proceedings concluded)
(Voir Dire of prospective jurors reported [recorded], not ordered
transcribed; 12 jurors seated)
(Court's instructions to jury reported, but not ordered
transcribed)
(At 4:15 p.m., bailiff sworn to take charge of the jury)
(At 4:30 p.m., jury returned)
```

(9/99) Transcript / 3-02-01

3-02 TITLE PAGE

The following are examples of the format to follow in preparing title pages.

A. General

```
STATE OF MICHIGAN
 (Court Number) JUDICIAL (Court Type) COURT [(Name of County, City, Township)]
or
                  IN THE PROBATE COURT FOR THE COUNTY OF (Name)
JOHN DOE,
          Plaintiff,
                                                          File No. 84-01234-NI
MARY JONES,
          Defendant.
                                (Type of Hearing)
                  BEFORE THE HONORABLE (Judge's name and title)
                         (City), Michigan - (Day), (Date)
APPEARANCES:
                         (Attorney's Name) (P #)
For the Plaintiff:
                         (Address)
                         (Phone Number)
                         (Attorney's Name) (P #)
For the Defendant:
                         (Address)
                         (Phone Number)
(REPORTED)
(RECORDED)
                        (Name, certification designation and number, and
(TRANSCRIBED) By:
                        telephone number)
                                     (page #)
```

B. Excerpts of Proceedings

STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT (WAYNE COUNTY)

JAMES JORDAN,

Plaintiff,

 σ File No. 84-12345-DM

CAROL JORDAN,

Defendant.

EXCERPTS OF TRIAL (Testimony of Witness John Jones)

BEFORE THE HONORABLE JAMES R. JUSTICE, CIRCUIT JUDGE

Detroit, Michigan - Monday, September 1, 1985

APPEARANCES:

For the Plaintiff: MR. RICHARD E. SMITH (P50006)

Smith & Harrison, P.C. 2000 Orange Grove

Detroit, Michigan 48226

(313) 555-3333

For the Defendant: MR. RICHARD R. JONES (P50007)

Jones & Jones, P.C. 3333 Plum Tree

Detroit, Michigan 48226

(313) 555-3434

RECORDED BY: Mary Wilson, CER 0238

Certified Electronic Recorder

(313) 555-6868

C. Probate Court

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF INGHAM

In the Matter of,

THE ESTATE OF JOHN JONES, Deceased.

File No. 84-2098-SE

PETITION FOR PARTITION OF PROPERTY

BEFORE THE HONORABLE JAMES R. JUSTICE, PROBATE JUDGE

Lansing, Michigan - Thursday, November 12, 1985

APPEARANCES:

Attorney for the Estate: MS. MARY WILSON (P50009)

Wilson & Thomas Law Offices

100 Lane Drive

Lansing, Michigan 48933

(517) 555-1440

Appearing in Pro Per: MR. JOHN J JAMES

200 Country Blvd.

Lansing, Michigan 48911

(517) 555-2121

Appearing in Pro Per: MRS. ELSIE Q. JAMES

5 City Building, Suite 14 Lansing, Michigan 48933

(517) 555-5222

REPORTED BY: Judith Kane, CSR 0128

Certified Shorthand Reporter

(517) 555-3405

(page #)

D. Multiple Defendants/Consolidated Cases

In criminal cases, "Plaintiff" is not typed after People of the State...

STATE OF MICHIGAN

95-A JUDICIAL DISTRICT (MENOMINEE COUNTY)

THE PEOPLE OF THE STATE OF MICHIGAN,

v

GUS BAKER and JEAN NOLAN,

File No. 84-10678-FH

Defendants.

THE PEOPLE OF THE STATE OF MICHIGAN,

V

GUS BAKER,

File No. 84-10682-FH

Defendant.

JURY TRIAL

BEFORE THE HONORABLE JAMES R JUSTICE, DISTRICT JUDGE (or Assigned Judge)

Menominee, Michigan - Monday, September 1, 1985

APPEARANCES:

For the People: MR. JOHN B. JONES (P50001)

Assistant Prosecuting Attorney

4000 South Street

Menominee, Michigan 49999 (906) 555-1222

For Defendant Baker: MR. J. B. JACKSON (P50002

1400 North Street

Menominee, Michigan 49999 (906) 555-2222

For Defendant Nolan: MR. RICHARD SMITH (P50003)

2800 East Street

Menominee, Michigan 49999 (906) 555-2333

REPORTED BY: Betty Thomas, CSR 0124

Certified Shorthand Reporter

(906) 555-2444

(page #)

E. Multiple Volumes

STATE OF MICHIGAN

SIXTH JUDICIAL CIRCUIT COURT (OAKLAND COUNTY)

SALLY ANN JONES,

Plaintiff,

v File No. 84-30201-CK

EVERYMAN'S INSURANCE CO., INC., A Michigan Corporation,

Defendant.

JURY TRIAL - VOLUME NO. II OF V

BEFORE THE HONORABLE JAMES R. JUSTICE, CIRCUIT JUDGE

Pontiac, Michigan - Tuesday, October 4, 1985

APPEARANCES:

For the Plaintiff: MR. JOHN B. JONES (P50004)

Jones & Adams, P.C. 123 State Street

Royal Oak, Michigan 48084

(313) 555-4321

For the Defendant: MR. JAMES R. SMITH (P50005)

Smith & Smith, P.C. 321 Court Street

Royal Oak, Michigan 48084

(313) 555-1234

RECORDED BY: William C. Jones, CER 1026

Certified Electronic Recorder

(313) 555-7868

(page #)

3-03 TABLE OF CONTENTS PAGE

The following are examples of the format to follow in preparing table of contents pages.

A. No Witnesses, No Exhibits

If there are no witnesses or exhibits, still include a Table of Contents

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WITNESSES:

None

EXHIBITS:

None

B. Criminal Case

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JUDY SMITH		
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ROSE JACKSON		
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MIKE FISH		
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EXHIBITS:	IDENTIFIED	RECEIVED
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MIKE	WELLS	
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EXHIBITS: IDENTIFIED RECEIVED

PX#1 Statement 7 8

C. Hearing During Examination

See Section 3-04, page 3-04-08 for a sample of a deposition read into the record.

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D. Jury Trial

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JOHN SHAH

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3-04 TRANSCRIPT PAGE

The following are examples of the format to follow in preparing transcript pages.

A. Administration of Oath

The transcript must be a verbatim record of the proceedings. The oath administered to a witness must be included.

Allegan, Michigan

Wednesday, December 2, 1984 - 10:24 a.m.

THE COURT: Ronald Whetstone, Case File 84-0978-FH. This matter was set today for a preliminary hearing on a charge of possession of a pistol in a motor vehicle.

The record shall indicate the appearance of Mr. John Smith on behalf of the Defense; Mr. Stone on behalf of the Prosecutor's Office. Counsel, you may proceed.

 $$\operatorname{MR}.$ STONE: Thank you, your Honor. I would first call Officer Rick Hoyer to the stand.

THE COURT: Do you solemnly swear or affirm that the answers you are about to give in this matter are true?

MR. HOYER: I do.

THE COURT: Fine. Be seated.

RICHARD JOSEPH HOYER

called as a witness at 10:26 a.m., testified as follows:

DIRECT EXAMINATION

BY MR. STONE:

- Q. Would you state your name for the record?
- A. Richard Joseph Hoyer.

B. Colloquy Before Examination

1. From time to time the court may talk to the witness or counsel in colloquy before direct examination begins. The identification of the witness and direct examination heading is placed where the attorney begins the examination.

MR. LADD: I would call Tammy Erickson to the witness stand.

MR. BERGMAN: Your Honor, could we approach the bench for one second, please?

THE COURT: Yes. This is off the record.

(At 3:19 p.m. to 3:21 p.m., conference at bench)

THE COURT: Back on the record. Tammy? You may have a seat up

there. Do you want me to conduct it?

MR. BERGMAN: If you would, please?

THE COURT: Tammy, how old are you?

MISS ERICKSON: Thirteen.

THE COURT: Tammy, the clerk is going to give you what we call an oath. Do you know what an oath is?

MISS ERICKSON: Yes.

THE COURT: Could you explain it to me?

MISS ERICKSON: It's a thing that you have to take. Well, I know what it is, but I can't explain it.

THE COURT: If you take an oath, does it mean that you swear to tell the truth?

MISS ERICKSON: Yeah, you can't tell a lie.

THE COURT: Fine. Please stand, and the clerk will administer the oath.

2. The witness is not "THE WITNESS" until the witness states, "I DO".

THE CLERK: Do you swear to tell the truth, the whole truth and nothing but the truth in the matter before the Court?

MISS ERICKSON: I do.

THE COURT: If you'll just speak up, Tammy, because these microphones don't amplify and we have to hear the answers.

THE WITNESS: Okay.

TAMMY ERICKSON

called as a witness at 3:25 p.m., testified as follows:

DIRECT EXAMINATION:

BY MR. LADD:

- Q. Would you state you name, please?
- A. Tammy Erickson
- Q. Where do you live?
- A. 1824 Marigold.

C. Examination by the Court

1. Colloquy

If the court examines a witness called by a party to the case, set the examination up as colloquy.

THE COURT: And did you say that you remembered seeing this person at an earlier time in the evening?

THE WITNESS: Yes, I saw him once before at about eight o'clock.

THE COURT: And where did you say that was?

THE WITNESS: At the party store in the middle of town.

THE COURT: Thank you. Anything further of the witness, Counsel?

(page #)

2. Q and A

If the court calls a witness and examines that witness, set the examination up as "Q and A".

EXAMINATION

BY THE COURT:

- Q. State your name.
- A. Mary Smith.
- Q. Now, I understand that you were present at the party that took place on $\label{eq:August 14th.} \text{August 14th.}$
- A. Yes, that's correct.

D. Party as a Witness

As soon as the party is sworn, s/he becomes "THE WITNESS." When s/he is excused from the stand, the title of "THE DEFENDANT" (or "PLAINTIFF") returns to him/her.

THE COURT: Does the Defendant wish to call any witnesses?

THE DEFENDANT: I wish to testify myself, your Honor.

THE COURT: Raise your right hand. Do you solemnly swear that you will give true answers to any questions put to you concerning this matter?

THE DEFENDANT: I will.

WILLIAM JOHNSON

called as a witness at 3:30 p.m., testified as follows:

DIRECT TESTIMONY

THE WITNESS: I just want to tell you, Judge, and also everybody here that what all these witnesses have been saying just ain't true.

It wasn't me that they saw. I don't know nothing about no robbery.

It's all just a mistake. That's all I have to say.

CROSS-EXAMINATION

BY MR. WILLIS:

Q. You are the Defendant in this action, is that correct?

E. Quoted Materials

1. In General

"Quoted materials begin fifteen spaces from the left-hand margin.

Carry-over lines of quoted materials begin ten spaces from the left-hand margin. The right-hand margin is observed at all times.

A new paragraph begins 15 spaces from the left-hand margin."

2. Partial Quote

MR. RICE: It's mandatory. It says, "...shall prescribe rules and regulations," and other matters.

3. Quoted Material with Narratives

MR. GREEN: May it please the Court, I wish to read from <u>People</u> v <u>Hampton</u>, found at 407 Mich 354, and I direct the Court's attention to page 373 of the volume, in support of my position which states as follows:

"Even the defendant, who argued that this Court...", meaning the Supreme Court, "...should adopt a directed verdict standard similar to the one required by <u>Jackson</u>...", being 443 US 307, "concludes that the trial judge's findings and order were consistent with the standards governing the ordering of new trials. In his brief, it is argued that:

'Here, the record shows that the trial judge is passing upon defendant-appellee's motion'" --

THE COURT: I have that case in front of me and I will read it.

4. Uncertainty About Quoted Versus Narrative Material

MR. GREEN: May it please the Court, I wish to read from a case in support of my position which states as follows:

"Even the defendant, who argued that this Court, meaning the Supreme Court, should adopt a directed verdict standard similar to the one required by Jackson, being 443 US 307, concludes that the trial judge's findings and order were consistent with the standards governing the ordering of new trials."

In his brief, it is argued that:

"Here, the record shows that the trial judge in passing upon defendant-appellee's motion- " $\,$

THE COURT: I am very familiar with that case and I will read it before ruling.

MR. GREEN: Very well.

(page #)

5. Interpolation and Quote

MR. WHITE: An exhibit is attached to this document. It says, "Plaintiff was a bus driver for nine months."

THE COURT: It says it right there, "...bus driver for nine months."

F. Deposition Read into Record

1. Direct Examination

(At 1:30 p.m., deposition of Dr. James Smith read into the record as follows:)

DIRECT EXAMINATION

BY MS. JONES:

- Q. Witness, will you state your name?
- A. My name is James Smith.
- Q. And you are a medical doctor, is that correct?
- A. Yes, that is correct.

(Reading of deposition concluded at 2:10 p.m.)

(page #)

2. Portions of Depositions Read to the Witness

BY MR. WHITE:

Q. This appears in the deposition on page 23, line 10, I asked:

"Question: Were there energy-absorbing concepts involved on the work of the expandable nozzle?

Answer: The work on the expandable nozzle was to work --

Question: Answer yes or no.

Answer: No."

Do you remember giving those answers to the questions as I just read them?

A. It was so long ago that I do not remember, but if it is written there, that must have been my answer.

BY MR. SMITH:

Q. Mrs. Jones, the question was asked of you, "Do you recall a situation where your --"

MR. WHITE: Would you state the page please.

MR. SMITH: Page 2, line 12.

BY MR. SMITH:

- Q. "Question. Do you recall a situation where your son had sprayed some substance in your face?" Do you recall that question?
- A. No.

(page #)

G. Interpreter

The witness may understand some questions well enough to answer without an interpreter. In that case, put the answer in colloquy form. Type in the oath administered to the interpreter.

(At 1:30 p.m., Irene B. Relleno sworn by the Clerk to interpret English into Spanish and Spanish into English)

JOSEPH RODRIGUEZ

called as a witness at 1:31 p.m., sworn through the interpreter:

DIRECT EXAMINATION

BY MR. MARKS:

Q. What is your name?

THE WITNESS: Juan Carlos.

- A. Juan Carlos.
- Q. Where do you live?
- A. 1325 Linville Road, Romulus.
- Q. Do you remember the night of February 17th of this year?

THE WITNESS: Yes.

A. Yes.

H. Witness Recalled

 $\mbox{MS. ZUZICH:}\mbox{ We would like to recall Mr. Goodwin for some questions, your Honor.}$

THE COURT: Mr. Goodwin, you're still under oath.

MR. GOODWIN: Yes, sir.

JOHN GOODWIN

recalled at 11:35 a.m. by the Defendant, previously sworn by the Court:

DIRECT EXAMINATION

BY MS. ZUZICH:

Q. You previously testified...

I. Adverse Witness

When a witness is called for cross-examination under the adverse witness statute, that witness is under cross-examination by all parties until examination is completed. [MCL 600.2161; MSA 27A.2161] Recross-examination is any examination subsequent to cross-examination by the same party. If the reporter/recorder is not certain whether the examination is direct, cross-redirect, or recross-, the use of the term "examination" or "reexamination" is permissible.

JOHN GOODWIN			
called at 10:30 a.m. by the Plaintiff (Defendant) witness statute, sworn by the Court (Clerk):	under	the	adverse
CROSS-EXAMINATION			
BY MS. ZUZICH:			
Q			
CROSS-EXAMINATION			
BY MR. GREENFIELD:			
Q			
RECROSS-EXAMINATION			
BY MS. ZUZICH:			
Q			
RECROSS-EXAMINATION			
BY MR. GREENFIELD:			
Q			

J. Jury Matters

Whenever jurors are speaking or being spoken to, use colloquy format.

1. Jury Voir Dire

THE COURT: Members of the jury panel, whether in the jury box or not, I am going to address some questions to all prospective jurors. Do any of you have members of your immediate family who are police officers for this City?

JUROR BAKER: I do.

THE COURT: Okay, fine. Is there anyone else?

JURORS: (No verbal response)

2. Juror Identification During Trial

JUROR NELSON: Your Honor, I cannot hear the witness.

3. Jury Verdict

(At 1:00 p.m., jury returned with verdict)

THE COURT: Ladies and gentlemen of the jury, have you reached a verdict and if so, would the Foreperson please rise and announce that verdict?

FOREPERSON SMITH: We have, your Honor. We, the jury, find the Defendant guilty as charged.

4. Jury Polling

THE CLERK: As your name is called will you please answer? Juror Nelson, is this and was this your verdict?

JUROR NELSON: It is.

K. Videotape Record of Court Proceedings

Administrative Order 1990-7: On order of the Court, the State Court Administrator is authorized to approve, until further order of this Court, trial courts to use videotape record systems for the purposes of making the verbatim court record of proceedings in individual courtrooms. Courts desiring approval to use the videotape record system in a courtroom must apply to the State Court Administrator and must submit a local administrative order to implement the videotape record procedures. Upon approval by the State Court Administrator of the application and the local administrative order, the court may use the videotape record system in the courtroom until further order of this Court or of the State Court Administrator.

The State Court Administrator is authorized to certify which videotape record equipment may be utilized by trial courts for the purposes of making the verbatim court record.

The applications by the trial courts and approval by the State Court Administrator shall be based upon criteria established by this Court.

The previous authorizations by this Court and by the State Court Administrator pursuant to Administrative Order 1989-2 to the twelve pilot courtrooms for utilization of the videotape record system is continued until further order of this Court or the State Court Administrator.

This order authorizes exceptions to the Michigan Code of Judicial Conduct, Canon 3A(7), which currently prohibits such recording, and to MCR 8.108, which requires that certified court reporters and recorders furnishing transcripts of proceedings be in attendance at those proceedings.

The following guidelines shall apply to the courts authorized to use videotape record systems for the purpose of making the court record:

At least two videotape recordings, recorded simultaneously, shall constitute part of the original record in the case. One videotape shall be retained by the clerk of the court to be forwarded, or for portions to be copied and forwarded, if an appeal is taken and if requested by the Court of Appeals, to the Court of Appeals pursuant to MCR 7.210. The other videotape shall be stored off the court premises in a location to be designated by the chief judge.

2. The judge shall:

- a. Be charged with the responsibility of ensuring through routine checks of the videotape system by a suitably trained person, that the videotape system is operating in keeping with specifications.
- b. Keep a proper index of proceedings that have been videotaped, including a list of witnesses and exhibits.

- 3. If an appeal is taken in an action which has been videotaped under this order, a transcript of the proceedings must be prepared in the same manner as in the case of proceedings recorded in other ways. However, a court reporter or recorder need not certify attendance at the proceedings being transcribed from the videotaped record, but need only certify that the transcript represents the complete, true and correct rendition of the videotape of the proceeding as recorded.
- 4. Transcripts of videotape recordings of 25 pages or less must contain, on each page, a reference to the number of the videotape and the month, day, year, hour, and minute at which the reference begins as recorded on the videotape. For example: (Tape No. 1, 10-1-87, 13:12). Transcripts of 26 or more pages must contain this reference on the first page, on every 25 pages thereafter, and on the last page.
- 5. Film or electronic media coverage in these courts, if utilized, shall be governed by the guidelines set out in Administrative Order 1989-1.
- 6. The State Court Administrative Office shall provide assistance in implementation of the use of videotape record system in each approved courtroom and shall continue to conduct an evaluation of the program. The courts using videotape record systems shall cooperate with the State Court Administrative Office.
- 7. This order shall be effective upon entry. Administrative Order 1989-2 is rescinded.

3-05 TRANSCRIPT CERTIFICATE PAGE

When only a porti	ion of the proc	eedings has	been transc	ribed, indicate	e that it is an '	'excerpt of the
proceedings."						

Certification designations are: Certified Shorthand Reporter (CSR)

Certified Stenomask Reporter (CSMR)

Certified Electronic Recorder (CER)

A. General Transcript Certificate Page

STATE OF MICHIGAN)
COUNTY OF	
I certify th	at this transcript, consisting of pages, is a complete,
true, and correct t	ranscript of the proceedings and testimony taken in this case on
(list all dates for	r which reporter or recorder is responsible).
Date	Signature
	Name [print or type], certification designation, and number
	Business address
	City, state, and zip

B. Transcript Certificate Page Prepared by Another

STATE OF MICHIGAN)			
COUNTY OF)			
I certify that this transcript, consisting of pages, is a complete,			
true, and correct transcript, to the best of my ability, of the proceedings and			
testimony taken in this case by (name, title, certification designation, and number			
of absent reporter/recorder) on (list all dates reported or recorded by absent			
reporter/recorder).			
I also certify that (name of absent reporter/recorder) has not certified			
this transcript because he/she			
a. has died.			
b. resigned.			
c. was removed from office.			
d. has left the state.			
e. is a certified electronic operator.			
f. is unavailable.			
g. other			
state reason			
Date Signature			
Name [print or type], certification designation, and number			
Business address			
City, state, and zip			

3-06 DEPOSITIONS

A. Introduction

A deposition is a pre-trial discovery procedure (see MCR 2.306) whereby parties or witnesses are examined by asking questions. A court reporter/recorder is present and records all questions and answers. Counsel for all parties are normally at a deposition. The person being examined is called the "deponent".

B. Taking Depositions

At a deposition, there is no judge to preside over the proceedings, and the reporter/recorder is in control. The reporter/recorder may arrange the equipment and the parties in whatever fashion s/he deems appropriate.

- 1. Obtain the complete case caption and name of the court in which the transcript is to be filed.
- 2. Obtain the name and address of the deponent and all attorneys present.
- 3. Administer the oath to the deponent.
- 4. Unlike courtroom proceedings, you may go off the record at any time for any party if all parties agree to go off the record. A reporter or recorder shall continue to report unless there is agreement of <u>all</u> parties present that they will go off the record.
- 5. After the deposition is completed, obtain orders for copies of the deposition transcript from the parties.

C. Producing the Transcript

Court reporters and recorders must follow the format prescribed by the State Court Administrative Office as published in this manual. [MCL 600.2510(2)]

- 1. Furnish the transcript as timely as possible.
- 2. Title page (see page 3-06-02)
- 3. Table of Contents page (optional in depositions) (see page 3-06-03)
- 4. Transcript page (see page 3-06-04) Individuals certified under MCR 8.108 must follow the prescribed format.
- 5. Certificate page (see page 3-06-05)

D. Delivering the Deposition Transcript

- 1. Enclose the original deposition transcript in a sealed envelope. (see page 3-06-06)
- 2. Deliver the original sealed deposition transcript to the ordering party along with his/her copy. [MCR 2.302(H) and MCR 2.306(F)]

E. Deposition Title Page

STATE OF MICHIGAN

34TH JUDICIAL CIRCUIT COURT (ROSCOMMON COUNTY)

JOHN R. DOE,

Plaintiff,

File No. 82-0234-NI (Name of Judge optional)

SAMUEL I. SMITH,

Defendant.

DEPOSITION OF SAMUEL I. SMITH

Taken by the Plaintiff on the 3rd day of June, 1986, at the offices of Terrence H. Bloomquist, 1010 Michigan Avenue, Grayling, Michigan, at 3:00 p.m.

APPEARANCES:

For the Plaintiff: MR. TERRENCE H. BLOOMQUIST (P88888)

P.O. Box 708

Grayling, Michigan 49738

(517) 555-1888

For the Defendant: MR. JOHN B. JONES (P99999)

Jones & Jones, P.C. 125 First Street

Grayling, Michigan 49738

(517) 555-1999

REPORTED BY: Susie Sullivan, CSR 9898

Certified Shorthand Reporter

(517) 555-8456

F. Deposition Table of Contents Page

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G. Deposition Transcript Page

Grayling, Michigan

Tuesday, June 3, 1986 - 3:10 p.m.

SAMUEL I. SMITH

HAVING BEEN CALLED BY THE PLAINTIFF AND SWORN:

REPORTER: Please state your name and spell your last name for the record.

THE WITNESS: Samuel I. Smith. S-m-i-t-h.

MR. BLOOMQUIST: Mr. Smith, would you first of all, if you do not understand my question, please say so. If you don't hear me, please say so. Otherwise I'll assume you've heard me, you understand the question, that your answer is responsive to the question. Okay?

THE WITNESS: Right.

MR. JONES: Could I just indicate, we've done it already. The court reporter's got to get everything in yes, no, I don't understand. Uh-huh and uh-uh is going to make a confusing record. So try to think about that.

MR. BLOOMQUIST: She does not take shaking of your head, so yes or no--you've got to say it. Do you understand that?

THE WITNESS: Right. Yes.

DIRECT EXAMINATION

BY MR. BLOOMQUIST:

- Q. Where do you live, sir?
- A. 7000 Mayfield, Gaylord, Michigan.

(page #)

H. Deposition Certificate Page

See MCR 2.304(C) and MCR 2.306(F) for further information. A deposition transcribed and certified in accordance with MCR 2.306(F) need not be submitted to the witness for examination and signature.

Certification Designation:	Certified Shorthand Reporter (CSR) Certified Stenomask Reporter (CSMR) Certified Electronic Recorder (CER)			
STATE OF MICHIGAN COUNTY OF MENOMINEE)))			
I certify that t	this transcript, consisting of pages, is a complete,			
true, and correct record of the testimony of (name of deponent) held in this cas				
on (date of deposition	<u>a)</u> .			
I also certify t	that prior to taking this deposition (name of deponent) was			
duly sworn to tell the	e truth.			
I also certify t	that I am not a relative or employee of or an attorney for a			
party; or a relative of	or employee of an attorney for a party; or financially			
interested in the act:	ion.			
Date	Signature			
	Name [print or type], certification designation, and number			
	Business address			
	City, state, and zip			

I. Deposition Envelope Cover

STATE OF MICHIGAN

34TH JUDICIAL CIRCUIT COURT (ROSCOMMON COUNTY)

JOHN R. DOE,

Plaintiff,

V

File No. 82-0234-NI (Name of Judge optional)

SAMUEL I. SMITH,

Defendant.

DEPOSITION OF SAMUEL I. SMITH

Taken by the Plaintiff on the 3rd day of June, 1986, at the offices of Terrence H. Bloomquist, 1010 Michigan Avenue, Grayling, Michigan, at 3:00 p.m.

APPEARANCES:

For the Plaintiff: MR. TERRENCE H. BLOOMQUIST, P88888

P.O. Box 708

Grayling, Michigan 49738

(517) 555-1888

For the Defendant: MR. JOHN B. JONES, P99999

Jones & Jones, P.C. 125 First Street

Grayling, Michigan 49738

(517) 555-1999

REPORTED BY: Susie Sullivan, CSR 9898

Certified Shorthand Reporter

(517) 555-2345

(page #)

Section 4
Fees, Ordering/Filing Transcripts

Transcript Fees, Ordering/Filing Transcripts

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Furnishing Transcripts

4-01 TRANSCRIPT FEES

A. Amount of Transcript Fees

1. Circuit Court

The circuit court reporters or recorders shall be entitled to demand and receive per page for a transcript ordered by any person the sum of \$1.75 per original page and 30 cents per page for each copy, unless a lower rate is agreed upon. For a transcript ordered by the circuit judge, reporters or recorders shall be entitled to receive from the county the same compensation.

Only if the transcript is desired for the purpose of moving for a new trial or preparing a record for appeal shall the amount of reporters' or recorders' fees paid for the transcript be recovered as a part of the taxable costs of the prevailing party in the motion, in the court of appeals or the supreme court.

[MCL 600.2543; MSA 27A.2543]

2. District Court

A district court recorder or reporter shall be entitled to receive for a transcript ordered by any person the same fees as provided by law for circuit court reporters or recorders. For a transcript ordered by the district judge or a circuit judge, recorders or reporters shall be entitled to receive from the district control unit the same compensation.

The amount of a recorder's or reporter's fees paid shall be recoverable as a part of the taxable costs by the prevailing party in a motion or on appeal.

[MCL 600.8631; MSA 27A.8631]

3. Probate Court

The probate court reporter or recorder may collect for transcripts of testimony requested by any interested party or ordered by the probate judge, other than depositions, the same fees as provided by MCL 600.2543 for circuit court reporters or recorders unless a lower rate is agreed upon. The transcript fees so collected shall be paid to the probate court reporter or recorder by the ordering party, or by the county for a transcript ordered by a probate judge, which fees shall accrue to the reporter or recorder as additional compensation.

4-01-01 (8/92)

Fees shall not be charged or collected for transcripts provided under Act No. 243 of the Public Acts or 1919, being section 35.41 of the Michigan Compiled Laws.

[MCL 600.878; MSA 27A.878]

B. Depositions

Reasonable and actual fees paid for depositions of witnesses filed in any clerk's office and for the certified copies of documents or papers recorded or filed in any public office shall be allowed in the taxation of costs only if, at the trial or when damages were assessed, the depositions were read in evidence, except for impeachment purposes, or the documents or papers were necessarily used.

[MCL 600.2549; MSA 27A.2549]

C. Limitations on Fees

1. Excessive Amount Prohibited

A judge of any court, sheriff, bailiff, district court magistrate, or other officer, or other person except attorneys at law to whom any fees or compensation shall be allowed by law for any service, shall not take or receive any other or greater fee or reward for his service, but such as is or shall be allowed by the laws of the state.

[MCL 600.2513; MSA 27A.2513]

2. Services Actually Performed

No fee or compensation allowed by law, shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him; but this section shall not prevent any officer from demanding any fee herein allowed for any service of which he is entitled by law to require the payment previous to rendering such service.

[MCL 600.2516; MSA 27A.2516]

3. Consequences of Violation

A violation of either MCL 600.2513 or 600.2516 shall be deemed a misdemeanor; and the person guilty thereof shall be liable to the party aggrieved for treble the damages sustained by him, and such violation shall be a cause for forfeiture of office.

[MCL 600.2519; MSA 27A.2519]

D. Freelance Reporters/Recorders

Absent judicial resolution, the Board has determined that reporters or recorders are subject to the same statutes as court employees when <u>acting</u> as an official court reporter or recorder. They may charge no more than the statutory per page rate. (see also Section 2-03, page 2-03-09)

[Court Reporting and Recording Board of Review; March, 1990]

Michigan courts may negotiate contractual agreements with freelance reporters or recorders to cover expenses not contemplated by the per page statutory fee.

[Court Reporting and Recording Board of Review; June, 1990]

Duties and other statutory provisions are located in Section 8-05 of this Manual, pages 8-05-01 through 8-05-03

4-02 ORDERING/FILING TRANSCRIPTS

A. Transcript to Party on Request

1. Regulation by Court Rule

a. In General

The court reporter or recorder shall furnish without delay, in legible English, a transcript of the records taken by him or her (or any part thereof) to any party on request. The reporter or recorder is entitled to receive the compensation prescribed in the statute on fees from the person who makes the request. [MCR 8.108(E)]

b. Record on Appeal

The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by MCR 6.425(F)(2), or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals. [MCR 7.210(B)(1)(a)]

2. Regulation by Statute

a. Circuit and Probate Court

If a transcript of a trial or other proceeding in a court of record other than the district court is ordered other than for filing in the case file, the court reporter or recorder also shall prepare and shall file a certified copy of the transcript in the case file at the expense of the person ordering the transcript unless a copy has been filed with the court or unless the chief judge of the court orders otherwise in an order filed in the case file. [MCL 600.2137(3); MSA 27A.2137(3)]

b. District Court

If a transcript of a trial or other proceeding is ordered other than for filing in the case file, the district court recorder or reporter also shall prepare and shall file a certified copy of the transcript in the case file at the expense of the person ordering the transcript unless a copy has been filed with the court, unless the circuit court has a copy pursuant to subsection (1), or unless the chief judge of a district court district orders otherwise in an order filed in the case file. [MCL 600.8635(2); MSA 27A.8635(2)]

B. Transcript on Order of the Trial Court

1. In General

On order of the trial court, the court reporter or recorder shall make and file in the clerk's office a transcript of his or her records, in legible English, of any civil or criminal case (or any part thereof) without expense to either party; the transcript is a part of the records in the case. [MCR 8.108(F)(1)]

Except when otherwise provided by contract, the court reporter or recorder shall receive from the appropriate governmental unit the compensation specified in the statute on fees for a transcript ordered by a court. [MCR 8.108(F)(2)]

An original of the verbatim record of other matters as may be required by supreme court rule shall be reduced to writing by the district court recorder or reporter and upon completion of the verbatim record shall be filed with the clerk of the district court or as directed by the district court.

[MCL 600.8635; MSA 27A.8635]

2. Preliminary Examination

An original and copy of the verbatim record of all preliminary examinations in which the defendant is bound over to the circuit court for further proceedings shall be reduced to writing by the district court recorder or reporter when ordered by the circuit court and upon completion of the verbatim record shall be filed with the clerk of the circuit court, or as directed by the circuit court. . . . The county shall pay the costs of transcribing preliminary examinations in accordance with the schedule provided in MCL 600.8631. [MCL 600.8635(1); MSA 27A.8635(1)]

Unless the defendant pleads guilty at the arraignment or the parties otherwise agree, the court must order the court reporter to transcribe and file the record of the preliminary examination. The order must also provide for the payment of the reporter's fees. [MCR 6.113(D)]

3. At Sentencing

The trial court, in its order appointing counsel for indigent criminal defendant, must direct the court reporter to prepare and file, within the time limits specified in MCR 7.210, 1) the trial or plea proceeding transcript, 2) the sentencing transcript, and 3) such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request.

The court, in an order appointing counsel for an indigent criminal defendant, must provide for payment of the reporter's or recorder's fees.

4. Post Conviction Proceedings

a. Appeals of Right.

An indigent defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that they are required to pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents without cost to the defendant, and, unless the transcript has already been ordered as provided in MCR 6.425(F)(2), must order the preparation of the transcript.

b. Appeals by Leave.

An indigent defendant who may file an application for leave to appeal may obtain copies of transcripts and other documents as provided in this subrule.

- 1) The defendant must make a written request to the sentencing court for specified documents or transcripts indicating that they are required to prepare an application for leave to appeal.
- 2) If the requested materials have been filed with the court and not provided previously to the defendant, the court clerk must provide a copy to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.
- 3) If the request includes the transcript of a proceeding that has not been transcribed, the court must order the materials transcribed and filed with court. After the transcript has been prepared, the court clerk must provide a copy to the defendant.

c. Other Postconviction Proceedings.

An indigent defendant who is not eligible to file an appeal of right or an application for leave to appeal may obtain records and documents as provided in this subrule.

- 1) The defendant must make a written request to the sentencing court for specific court documents or transcripts indicating that the materials are required to pursue postconviction remedies in a state or federal court and are not otherwise available to the defendant.
- 2) If the documents or transcripts have been filed with the court, the clerk must provide the defendant with copies of such materials without cost to the defendant.

- 3) The court may order the transcription of additional proceedings if it finds that there is good cause for doing so. After such a transcript has been prepared, the clerk must provide a copy to the defendant.
- (4) Nothing in this rule precludes the court from ordering materials to be supplied to the defendant in a proceeding under subchapter 6.500.

[MCR 6.433]

4-03 ACCESS TO COURT FILES

A. Filing Papers

The clerk shall endorse on every paper the date on which it is filed. The clerk shall keep a file folder for each action, bearing the civil action number assigned to it, in which the clerk shall keep all pleadings, process, orders, and judgments filed in the action. The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court. [MCR 8.105(B)]

B. Access to Papers

- 1. Unless access to a file is restricted by statute, court rule, or a suppression order, any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in MCR 8.105(C)(2) and (3).
- 2. If a person wishes to obtain copies of papers in a file, the clerk shall provide copies upon receipt of the cost of production. If the clerk prefers, he or she may permit the requesting person to make copies at his or her own expense under the direct supervision of the clerk.
- 3. A court, by administrative order adopted pursuant to MCR 8.112(B), may make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions.

[MCR 8.105(C), Michigan Trial Court Case File Management Standards, Component 19, pages 26 through 29]

Section 5 Appellate Procedures

Appellate Procedures

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Appellate Procedures

5-01 APPEALS FROM PROBATE COURT

A. Orders Which Can Be Appealed To Court Of Appeals

- 1. <u>Final</u> orders affecting the rights or interests of interested person in an estate or trust.
- 2. Adoption orders.
- 3. <u>Final</u> orders in juvenile cases which include:
 - a. Disposition placing child under supervision of the court or removing the child from his/her home;
 - b. Orders terminating parental rights;
 - c. Any order required by law to be appealed to the Court of Appeals; and
 - d. Any other final order.
- 4. <u>Final</u> orders in condemnation cases under drain code.

[MCR 5.801(B), MCR 5.993]

B. Orders Which Can Be Appealed To Circuit Court

Anything not covered above.

[MCR 5.801(C)]

5-01-01 (rev. 7/98)

5-02 APPEALS TO CIRCUIT COURT

A. Procedure

- 1. Obtain written request from attorney with suitable deposit. [MCR 7.101(C)(2)(c)]
- 2. Prepare SCAO approved form MC 501 Reporter/Recorder Certificate of Ordering Transcript on Appeal. Deliver to appellant with sufficient copies. Copy of certificate must be served on appellee within 7 (seven) days after the claim of appeal is filed. Appellant is also responsible for filing the certificate with trial court and circuit court. [MCR 7.101(C)(3)(c)]
- 3. Complete transcript within 28 (twenty-eight) days. Furnish completed transcript to appellant for filing with the trial court. [MCR 7.101(F)(1)]

a. Filing and Furnishing the Transcript, Notice

The court rule requires the appellant to file the transcript with the trial court, however, it has been standard practice for the reporter/recorder to not only furnish the party with a copy of the transcript but to file the transcript with the trial court. SCAO approved form MC 502 has been used to notify the court and the parties of this filing, however, notice is required only in appeals to the court of appeals. [MCR 7.210(B)(3)(e)]

b. Transcript Not Completed Within Time Frame

If the transcript is not completed within 28 days, the trial court shall postpone transmittal of the record, enter an order to facilitate the preparation of the record, and notify the circuit court of the postponement and estimated date of transmittal. (SCAO approved form MC 503 is available for requesting an extension in appeals to the Court of Appeals. There is no court rule which specifically requires or allows the reporter/recorder to motion the court for an extension of time in appeals to circuit court.) [MCR 7.101(F)(4)]

If the trial court postpones transmittal of the record, the circuit court may, on its own initiative, exercise superintending control over the trial court, the reporter/recorder, or others to prevent delay.

[MCR 7.101(N)(1)]

In order to keep appeal costs down, the rules provide that a party may withdraw the transcript from the clerk only to prepare briefs. [MCR 7.101(I)(2)]

B. Form of Transcript

Although not required under any court rules pertaining to circuit court appeals, it is suggested that the transcript:

- 1. Be filed in one or more volumes with a hard-surfaced or other suitable cover;
- 2. Show title of action on front cover;
- 3. Be prefaced with table of contents showing subject matter of transcript, with page references to significant parts of the trial or proceedings, including testimony of each witness by name, arguments of attorneys, jury instructions;
- 4. Have consecutively numbered pages, beginning with title page, at bottom center of each page.

[MCR 7.101(F)]

5-03 APPEALS TO COURT OF APPEALS

A. Procedure

1. Obtain written request from attorney with suitable deposit, or receive order from circuit court as specified in MCR 6.425(F)(2).

With the claim of appeal, the appellant shall file a copy of the certificate of the reporter or recorder, a statement by the attorney that the transcript has been ordered (in which case the certificate of the court reporter or recorder must be filed as soon as possible thereafter), or a statement by the attorney that there is no record to be transcribed. [MCR 7.204(C)(2) and MCR 7.204(E)(4)]

The appellant is responsible for <u>securing</u> the filing of the transcript by ordering the full transcript from the court reporter or recorder, however, the court reporter or recorder is responsible for the actual filing. If the appellant wants less than the full transcript, a motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant. The filing of this motion extends the time for filing the court reporter's or recorder's certificate until 7 days after entry of the trial court's order on the motion.

[MCR 7.210(B)(1)(a), (c) and MCR 7.210(B)(3)(b)]

- 2. Prepare SCAO approved form MC 501 Reporter/Recorder Certificate of Order of Transcript on Appeal. Certificate is to be furnished within 7 (seven) days after a transcript is ordered by a party or the court (see above also). [MCR 7.210(B)(3)(a)]
- 3. Complete transcript within time limits listed below and file the transcript with the trial court:
 - a. <u>14 days</u> after it is ordered for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case;
 - b. <u>28 days</u> after it is ordered in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere;
 - c. <u>42 days</u> after it is ordered in any other interlocutory criminal appeal or a custody case; (termination of parental rights in the juvenile division of the probate court is considered a custody case)
 - d. 91 days after it is ordered in other cases.

- 4. The Court of Appeals may extend or shorten these time limits in an appeal pending in the court on motion filed by the court reporter or recorder or a party. Prepare SCAO approved form MC 503 Motion to Extend Time for Filing Transcript on Appeal. [MCR 7.210(B)(3)(b)]
 - a. FILE 5 (five) copies of a motion and affidavit (see MC 503) with the Court of Appeals along with the appropriate filing fee. In lieu of this fee, a motion to waive fees or a copy of an order appointing an attorney may filed.

 [MCR 7.211(A)]
 - b. The motion will be heard on the first Tuesday, 7 (seven) days after the motion is served on all parties. [MCR 7.211(B)(2)(e)]
 - c. File completed transcript with the trial court. [MCR 7.210(B)(3)(b)]

B. Form of Transcript

The transcript must:

- 1. Be filed in one or more volumes with a hard-surfaced or other suitable cover;
- 2. Show title of action on front cover;
- 3. Be prefaced with table of contents showing subject matter of transcript, with page references to significant parts of the trial or proceedings, including testimony of each witness by name, arguments of attorneys, jury instructions;
- 4. Have consecutively numbered pages, beginning with title page, at bottom of each page.

Transcripts with more than one page, reduced in size, printed on a single page are permitted and encouraged, but a page in that format may not contain more than four reduced pages of transcript.

[MCR 7.210(B)(3)(d)]

Immediately after the transcript is filed, prepare SCAO approved form MC 502 -Notice of Filing of Transcript and Affidavit of Mailing. File with the Court of Appeals, with copies to all parties. Standard practice has been to provide the trial court with a copy of the notice as well; however, there is no requirement to do so.

[MCR 7.210(B)(3)(e)]

C. Copies of Transcripts

Additional copies of the transcripts required by the appellant may be ordered from the court reporter or recorder, or photocopies may be made of the transcript furnished by the court reporter or recorder. [MCR 7.210(B)(3)(c)]

D. Reproduction of Records

Where facilities for the copying or reproduction of records are available to the clerk of the court or tribunal whose action is to be reviewed, the clerk, on a party's request and on deposit of the estimated cost or security for the cost, shall procure for the party as promptly as possible and at the cost to the clerk, the requested number of copies of documents, transcripts, and exhibits on file. [MCR 7.210(D)]

E. Use of Records

Until the record is sent to the Court of Appeals, the parties may withdraw any transcripts and exhibits filed in the case on written receipt to the clerk. The party may retain the transcripts and exhibits only as long as necessary to prepare an appellate brief and shall promptly return them to the clerk. [MCR 7.210(E)]

F. Responsibility When More Than One Reporter or Recorder

In a case in which portions of the transcript must be prepared by more than one reporter or recorder, unless the court has designated another person, the person who recorded the beginning of the proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it, and giving the notice required by MCR 7.210(B)(3)(e). [MCR 7.210(B)(3)(g)]

G. Discipline

A court reporter or recorder failing to comply with the requirements of these rules is subject to disciplinary action by the courts, including punishment for contempt of court, on the court's own initiative or motion of a party. [MCR 7.210(B)(3)(f)]

5-04 SCAO APPROVED FORMS

A. Instructions

Filing/distribution instructions at the top of all forms are self-explanatory. Please observe the instructions at all times.

1. Heading on Forms

- a. Complete the entire heading, i.e., court number and file number (on MC 501 only, check whether appeal goes to Circuit Court or Court of Appeals).
- b. For probate matters (IN THE MATTER OF:) please provide complete case name and specify the appellant and appellee (at request of the Court of Appeals).
- 2. MC 501, Reporter/Recorder Certificate of Ordering of Transcript on Appeal
 - a. To allow the appellant to comply with MCR 7.101(C)(3)(c), MC 501 must be completed and certified by the reporter/recorder so that the appellant may file a copy with appellate court within 7 days after the claim of appeal is filed.
 - b. For appeals to the Court of Appeals, MCR 7.210(B)(3)(a) requires the reporter/recorder to file this certificate within 7 days after a transcript is ordered by a party or the court. Although it is the responsibility of the appellant to file this form in appeals to the circuit court, the court reporter/recorder often takes this responsibility to ensure that filing is accomplished timely.
- 3. MC 502, Notice of Filing of Transcript and Affidavit of Mailing

This form is for use in appeals to the Court of Appeals as required under MCR 7.210(B)(3)(e) but can be used in appeals to circuit court as well. The form is to be completed by each reporter/recorder who is filing in a given case. The Affidavit of Mailing on the reverse side of the original copy must be completed and notarized before filing. There is no requirement to give notice of filing or an affidavit of mailing for appeals to circuit court, however, the court reporter/recorder often takes this responsibility. Send ALL correspondence to the Court of Appeals at its Lansing, Michigan address.

4. MC 503, Motion to Extend Time for Filing Transcript on Appeal

a. To Court of Appeals

This form is for appeals to the Court of Appeals as required under MCR 7.210(B)(3) but can be used in appeals to circuit court as well. The reporter/recorder is responsible for completing the form.

b. To Circuit Court

There is no requirement for a formal motion to extend time for appeals to the circuit court; however, individual court practice may require such a document. MCR 7.101(F) states that in appeals to circuit court, when a transcript is not available within the time required, the trial court shall postpone transmittal of the record, enter an order to facilitate the preparation of the record, and notify the circuit court of the postponement and of the estimated date of transmittal. Extension of time on appeal to the Circuit Court should be requested only under the most extraordinary circumstances. Every effort should be made to produce all transcripts on appeal within the 28 days allowed by court rule.

c. Procedure for determining HEARING DATE IN THE COURT OF APPEALS:

- 1) The Court of Appeals hears motions on Tuesday;
- 2) A motion fee must accompany the motion. In lieu of this fee, a motion to waive fees or a copy of an order appointing an attorney may be filed.

 $B. \quad MC~501-see~http://courts.michigan.gov/scao/courtforms/index.htm$

C. MC 502 - see http://courts.michigan.gov/scao/courtforms/index.htm

D. MC 503 - see http://courts.michigan.gov/scao/courtforms/index.htm

Section 6
Reference Materials

Reference Materials

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Reference Materials

6-01 REFERENCE MATERIALS

A. Primary Materials

The following list is a short summary of the top ten reference materials that all reporters and recorders should have, or at least have available, for quick reference.

- 1. A good unabridged dictionary, such as Random House or Merriam Webster.
- 2. Taber's or Dorland's Medical Dictionary.
- 3. Black's Law Dictionary.
- 4. Martindale-Hubbell. Information on attorneys and judges including: bar numbers, schooling, degrees, addresses, phone numbers, etc.
- 5. Physicians Desk Reference (PDR): Prescription and Non-prescription Drugs.
- 6. Michigan Rules of Court, Current Edition. Includes Uniform System of Citations, Michigan Court Rules and Approved Court Forms. West Publishing Company, St. Paul, Minnesota.
- 7. How 4: A Secretary's Reference Manual.
- 8. Reverse Medical Secretary. Lists medical words by suffix.
- 9. McGraw-Hill Scientific and Technical Dictionary.
- 10. The Merck Manual of Diagnosis and Therapy.

B. Additional Materials

- 1. Association Magazines, exx, NSRA, Verbatim, Readback, etc.
- 2. Bartlett's Familiar Quotes
- 3. Court Reporting, Grammar and Punctuation, Diane Castilaw, 2d Edition, South-Western Publishing Co.
- 4. Houghton-Mifflin Medical and Health Sciences Word Book

6-01-01 (rev. 7/98)

6-01-02 / Reference Materials (rev. 7/98)

- 5. Houghton-Mifflin Legal Word Book
- 6. Thesaurus
- 7. Webster's Word Book, a speller-divider of words
- 8. Zipcode Book The post office will give you \$1.00 off if you bring the cover back each year.

6-02 PUNCTUATION FOR COURT DOCUMENTS

A. Basic Punctuation

1. <u>Series:</u> Three or more items joined by a conjunction. Include a comma before the conjunction.

Example: A I was in the car with Luke, Laura, and John.

2. <u>Parenthetical:</u> Added words or expressions. Commas on both sides.

Example: A We were, however, aware of the police car.

3. <u>Conjunction:</u> Independent clauses joined by a conjunction. Use a comma before the conjunction.

Example: Q When did you arrive at the scene, and how many others were with you?

4. <u>Appositive:</u> Word or words used to further explain. Use commas on both sides of the expression.

Example: Q Where were you on Friday, October 26, at 9 a.m.?

5. Introductory: Clause or phrase at the beginning of a sentence; no commas if at the end.

Example: Q When you left the bar, who did you see?

6. <u>And Omitted:</u> Two adjectives modifying the same noun; the word "and" omitted between them. Use a comma.

Example: A It was a cloudy, dark night.

7. <u>Nonrestrictive</u>: Clause or phrase that further identifies but is not necessary for the sense of the sentence. Enclose with commas.

Example: A Mary Smith, who is my landlady, will verify that.

8. <u>No Conjunction:</u> Two closely related sentences whose meaning would be more clear if read as a unit. Use a semicolon instead of making two sentences.

Example: A Mary was at her mother's house; her husband was at home alone.

9. <u>Singular Possessive:</u> If the base word is singular, determine the singular spelling; then add 's.

Example: A I talked to the attorney's secretary.

- 10. <u>Plural Possessive:</u> If the base word is plural, determine the plural spelling. If it ends in s, add'; if it ends in other than s, add 's.
 - *Example:* A The three witnesses' testimony was not correct.

Q Where was the children's father at the time?

11. <u>Hyphenate Before a Noun:</u> Hyphenate a compound adjective before a noun.

Example: Q When does your six-year term end?

12. <u>Yes or No Responses:</u> Always use a comma after the response yes or no. If the rest of the response adds something new to the information, use a period after the yes or no.

Example: A No, I did not see him running from the scene.

A Yes. We went back the next day, too, to see what happened.

13. <u>Verification Question:</u> If a statement is followed by a question that asks for a verification of the statement, use semi-colons before the question.

Example: Q You saw the man enter the door; isn't that right?

14. <u>Direct Address:</u> Use commas to set off words of direct address.

Example: Q I would like to request a recess, your Honor, if at all possible.

15. <u>Interruption by Another:</u> Use a dash to show an interruption of a speaker by another speaker.

Example: A I was walking down the street and--

Q Please answer the question that was asked.

16. <u>Self Interruption:</u> Use a dash when a speaker interrupts himself or herself and finishes the sentence with the new thought.

Example: A We could not see the car--the truck until we were in the

intersection.

If the speaker resumes his original thought, use a pair of dashes.

Example: A We have been married eight years--well, just a little bit less--and we have four children.

B. Number Use

Numbers one to ten should be expressed in words; numbers larger than ten should be expressed in figures with the following exceptions:

- 1. Amounts of money: always in figures such as \$35; 6 cents; \$5,300.10.
- 2. <u>Percents:</u> always in figures such as 6 percent; 500 percent.
- 3. Measurements: always in figures such as 3 feet; 18 gallons; 4 degrees.
- 4. <u>Beginning a sentence:</u> always in words such as "Thirty-five men were there."
- 5. After a noun: always in figures such as No. 3; Room 310; page 4.
- 6. <u>Dates:</u> always in figures such as May 10, 1982; the 10th of May (or the tenth of May).
- 7. <u>House numbers:</u> always in figures except One such as 36 West Fifth; One North 15th.

C. Commonly Used and Misspelled Words

All right

Cross-examination

Direct Examination

Attorneys (plural)

Defendant

Appellant

Judgment

Argument

Acknowledgment

Voir Dire

Allegedly

Corroborate

D. Commas and Semicolons

1. <u>Verification Question:</u> A short question which asks for a verification of the statement. Use a comma before the word or phrase.

Example: That is right, isn't it?

2. <u>Series:</u> To separate items in a series. A complicated series may call for semicolons.

Example: I know Sharon; her mother, Rose; and Beatrice.

3. <u>Addresses:</u> To separate each line of an address which would be placed on a separate line of the envelope.

Example: My address is 4131 - 11th Street, Mt. Pleasant, Michigan.

4. <u>Contrasting Expressions:</u> Use commas to separate contrasting expressions from the rest of the sentence.

Example: He likes you, not me.

5. <u>Miscellaneous Abbreviations</u>: Abbreviations such as Inc., Jr., etc. must be followed by a comma (and usually preceded by a comma).

Example: Include John Smith, Jr., in your group.

6. <u>Introductory Colloquial Words:</u> Short slang words used as an introduction to a statement are complete sentences. Use a period to mark the end of an elliptical expression that represents a complete statement or command. These elliptical expressions often occur as answers to questions or as transitional phrases.

Example: All right. Tell me what happened.

7. <u>Illustrative Phrases:</u> Use a semicolon before and a comma after the word or words which introduce an illustrative phrase.

Example: We know what you are saying; that is, we understand.

8. <u>No Conjunction:</u> Use a semicolon to separate two independent clauses without a conjunction. (Or make two sentences if the thoughts are not closely related).

Example: He was late; therefore, we missed the bus.

9. <u>Dependent "that" Clauses:</u> Use a semicolon to separate a series of dependent "that" clauses.

Example: We know that you were there; that you had driven up in a white car;

that your sister was with you; and that you had a gun.

10. <u>Missing Verb:</u> Use a semicolon to separate two independent ideas when the verb is missing in one and assumed to be carried from the first. Use a comma in place of the missing verb.

Example: Sandra went shopping; John, to the bar.

11. <u>Independent Clauses, Conjunction, and Other Commas:</u> Use a semicolon to separate two independent clauses when there are other commas in the sentence.

Example: In the first place, we should have known better; but the temptation was there.

E. Apostrophes

1. <u>Singular Possessives Ending in "S":</u> Still add 's to the singular spelling. If, however, you do not pronounce an extra syllable, you may just add '.

Example: Mr. Peters's business is doing well. OR

Mr. Peters' business is doing well.

2. <u>Possessives When Not Immediately Followed by a Noun:</u> Punctuate as if the noun followed.

Example: We stayed at my mother's. (House is assumed)

3. <u>Plurals of Figures, Symbols, and Letters:</u> An apostrophe may be used.

Example: We will always remember the 1980s. (or 1980's).

4. <u>Omission of Figures:</u> Use an apostrophe to show the omission.

Example: We will always remember the '80s.

5. <u>Joint Possession:</u> Use an apostrophe only after the last noun to show joint possession.

Example: Tom and Harry's car was wrecked.

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6. <u>Possession of Compound Words:</u> Singular possessive: use 's. Plural possessive: use 's. That is, the plural spelling requires the first word of the compound to be made plural-not that last word.

Example: My sister-in-law's father came to town. (singular possessive)

My sisters-in law's children were loud. (plural possessive)

7. <u>Adjectives:</u> Don't confuse adjectives with possessives.

Example: The sales meeting was held yesterday.

8. <u>Association Names:</u> Use an apostrophe if the official name includes the apostrophe.

Example: The National Shorthand Reporters Association met.

F. Dash

1. <u>Interruption:</u> Use a dash to show the interruption of one speaker by another.

Example: Q You were at the--

A I don't understand you.

2. <u>Self-Interruption:</u> Use a dash to show an interruption--a change of thought--of a speaker.

Example: Q What are you--who are you talking about?

3. <u>Parenthetical Interruption:</u> Use a pair of dashes to set off a self-interruption which is parenthetical to the thought.

Example: A We talked with Sally--she was a good friend--on that day.

4. <u>Interruption/Second Speaker/Resumption:</u> Use dashes to show the continuation of the thought.

Example: Q When were you at the--

A What do you mean?

Q --at the station?

G. Capitalization

1. <u>Rule 1:</u> Capitalize the first word of a sentence or sentence fragment which represents a sentence.

Examples: Q And when did you arrive?

A About 6 p.m. Q On what day?

A The last day of the week, Saturday.

2. Rule 2: Capitalize the names of specific persons, places, or things.

Examples: When did you meet John Wilson?

Have you visited Missoula, Montana?

3. <u>Rule 3:</u> Capitalize the days of the week, months of the year, and holidays or special days.

Examples: Yes, I was there on Wednesday.

I was in the hospital for all of February.

We voted to have the Fourth of July off rather than Good Friday.

4. Rule 4: Capitalize seasons of the year only if they are made proper nouns by their use.

Examples: I plan to begin school in the fall.

He played the role of Winter in the spring play.

I took two courses winter semester.

5. <u>Rule 5:</u> Capitalize adjectives which are derived from proper nouns. Exceptions to this rule include congressional, constitutional, and senatorial.

Examples: He is an American citizen.

He is a Michigander.

6. <u>Rule 6:</u> Capitalize the names of institutions such as colleges, universities, hospitals, churches, and libraries. Capitalize the name of a division within those institutions when it represents the official name of the division.

Examples: I attend the University of Texas.

My major professor is in the Department of Political Science.

My son attends Michigan State College. (no such institution exists)

He is president of the Board of Education.

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7. <u>Rule 7:</u> Capitalize the names of companies, unions, associations, societies, independent committees and boards, political parties, conventions, foundations, fraternities, sororities, clubs, and religious bodies.

Examples: She was chairperson of the Republican National Committee.

He used to serve on the Committee on Ways and Means.

It was an idea that came from the Mothers Against Drunk Driving.

8. <u>Rule 8:</u> Capitalize common organization names such as advertising department, board of directors, and finance committee when they are actual names within units of the speaker's organization. Do not capitalize them when they are used to refer to some other organization unless there is some reason the speaker is giving them special importance or distinction.

Examples: Our Marketing Department was headed by William Jones.

I believe he worked for the marketing department of Wentworth,

Inc.

9. <u>Rule 9:</u> Capitalize the names of relatives (mother, father, sister, brother) when used as a substitute for the individual's name.

Examples: My sister is in the courtroom today.

I spent the day with my father. I asked Mother to call my sister.

I was unable to reach my mother on the phone.

10. <u>Rule 10:</u> Capitalize personal or corporate titles that precede a name.

Examples: Will Sheriff Martin please come to the stand.

Will Mr. Martin, Sheriff, please come to the stand.

Will the sheriff please come to the stand.

11. <u>Rule 11:</u> For some exceptionally important officials or dignitaries, capitalize the name of the office even if it follows or replaces a specific personal name.

These exceptions and representative examples include the President, Vice President, Attorney General, Director of the FBI, Commissioner of Education, Senator, and Representative on the national level or in foreign governments.

In state government, capitalize only the Governor and Lieutenant Governor but not senator, representative, attorney general.

On the international level, capitalize the Pope and Secretary General of the United Nations. Examples of capitalization of foreign dignitaries are the Queen Mother, the Duke of Windsor.

Examples: Mr. Quayle, Vice President, is the brunt of Carson's jokes.

John Jones, Senator from Florida, was the featured speaker. William Thompson, senator from our district, was the speaker.

12. <u>Rule 12:</u> Capitalize the titles of high-ranking officials or other prominent individuals when used in place of their name.

Examples: The President of the United States was in the city that day.

The Secretary of Defense was quoted in the paper.

The Governor signed the bill yesterday. The Senator has a different viewpoint.

The Pope is the spokesperson for the Vatican. She was compared with Mother Theresa.

The Dean of the School of Business met with the Advisory

Committee.

The Chairperson of the Board must assume that responsibility.

The First Lady has some awesome responsibilities.

13. <u>Rule 13:</u> Capitalize titles that are used informally in place of names in direct address. Note exceptions: sir, madam. In transcripts, counsel and counselor carry a certain amount of prestige and should be capitalized in direct address.

Examples: Please, Doctor, explain the use of that term.

What is your opinion, Professor?

When did you meet the defendant, Father?

No, sir, I do not remember.

Please proceed, Madam President. Please approach the bench, Counsel.

14. <u>Rule 14:</u> Do not capitalize nouns which identify positions (unless high government positions.)

Examples: He ran for district attorney.

The doctor arrived within minutes.

A highway patrolman arrived shortly thereafter.

I am a systems analyst.

The judge of that court will rule on the matter on Monday.

The state senator met with us yesterday.

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15. <u>Rule 15:</u> Capitalize the word "acting" when it appears before a title. Do not capitalize ex-, former, -elect, or late.

Examples: We were honored by the presence of Acting President Ellis.

He was a friend of ex-President Reagan.

He came to the house when he was Governor-elect.

16. <u>Rule 16:</u> Capitalize State, County, City, Town, or Township when used in reference to a governmental body.

Examples: He was employed by the State of Maine.

We visited the state of Maine.

This agreement was signed by the City of Phoenix. We compared the city of Phoenix with the city of Miami. You must obtain your license from the County of Isabella.

We live in the county named Isabella.

You must appear in Circuit Court on Wednesday. A district court has jurisdiction over this case.

17. <u>Rule 17:</u> Capitalize the names of governmental organizations (federal, state, or local).

Examples: You obtain your social security benefits from the Social Security

Administration Office.

Have you filed with Worker's Compensation?

The American Civil Liberties Union will be called to testify.

He is employed by the Oregon State Patrol. Judge O'Connell presides in District Court. The Senate meets in Washington, D.C.

18. <u>Rule 18:</u> Capitalize a noun when used as an abbreviated form of a governmental agency.

Examples: I received my food stamps from the Welfare Department.

Yes, this drug was examined by the Food and Drug. (meaning Food

and Drug Administration)

He went to West Point. (meaning West Point Academy) The membership of the House is based on population.

19. Rule 19: Capitalize military branches of the government or their abbreviations.

Examples: I joined the Army after I graduated.

The Coast Guard is always on duty at that location. The National Guard was called to handle the riot. He joined the Marines. (meaning Marine Corps)

I taught for the U.S. military.

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20. <u>Rule 20:</u> Capitalize the word "Court" when referring to the judge.

Examples: You heard the Court give you rules to follow in making a decision.

The case was heard before Judge O'Neil.

The judge has the responsibility of giving the jury charge. The Court has the responsibility of giving the jury charge. The bailiff will usher the jury members to the juryroom.

21. <u>Rule 21:</u> Capitalize the brand names of products, including drugs. Do not capitalize the generic names or slang names.

Examples: I needed to take at least three aspirin a day.

I bought coke in my neighborhood. (the drug) The doctor prescribed Valium for my condition. We were out of Pampers so had to go to the store.

My secretary made three xerox copies.

22. <u>Rule 22:</u> For liquor or beverages, capitalize any word which in its use, is a country or a derivative of a country. Capitalize any other specific name of a beverage which, if not capitalized, would be confusing to the reader.

Examples: We always drank French wine.

Irish whiskey is the best.

You should use Irish Mist for Irish coffee.

He usually drank vodka and Squirt. He always asked for a Seven-Seven.

One Christmas he drank a Tom and Jerry. He convinced me that Pepsi was a better drink.

23. <u>Rule 23:</u> Capitalize exact names of academic courses but do not capitalize general subject areas.

Examples: I earned an A in Accounting 101.

I plan to study accounting.

A course in business English was offered. He was very interested in French history.

24. <u>Rule 24:</u> Academic degrees and their abbreviations are capitalized when written after the name of the person having the degree. They are also capitalized when written out as a complete term. They are not capitalized when they are used in a general sense.

Examples: I hope to have my Master's degree by June.

He has been working on his doctorate at Florida State.

Isabel Morales, Doctor of Philosophy, will speak to our group.

He'll never get his medical degree, in my opinion.

The job requires a bachelor's in sociology. Samuel Goldman, D.D.S., is now open for business.

25. Rule 25: Do not capitalize grades in school or classification of year in school.

Examples: He completed the sixth grade. I am a sophomore in college.

26. <u>Rule 26:</u> Capitalize all words other than articles (a, an, the), prepositions of fewer than four letters, and short conjunctions in the titles of literary or artistic works or other published works.

Always capitalize the first word and the last word of a title.

Examples: Have you read Gone with the Wind?

He has written an article, "How to Interrogate."

We agreed that <u>Les Miserables</u> was an exceptionally fine musical. I'm writing a book I hope to entitle <u>A Country to be Proud Of.</u>

27. Rule 27: Capitalize the names of historical events and periods.

Examples: He fought in World War II.

My parents were a product of the Great Depression.

28. <u>Rule 28:</u> Capitalize nicknames or imaginative names given to movements, programs, or historically designated cultural periods.

Examples: Johnson advocated the Great Society.

We are living in the "me" generation.

The Cultural Revolution was a dark period in China's history.

29. <u>Rule 29:</u> When capitalizing a hyphenated word, capitalize the word after the hyphen, unless the hyphenated word was capitalized only because it began the sentence.

Example: His book was called The Runner-Up.

Follow-up information was available on January 1.

30. <u>Rule 30:</u> Capitalize the entire titles of places, things, and ideas. Do not capitalize the shortened forms used in place of the full name.

Examples: They were to leave from O'Hare Airport.

There were to leave from the Chicago airport.

6-03 GLOSSARY OF LEGAL TERMS

ABATE To reduce, or diminish or defer a cause of action.

ABROGATE To annul, repeal or destroy a former law, rule of order.

ABSTRACT OF CONVICTION Summary of the court's finding on a moving violation. This term commonly refers to the form that the courts prepare and send to the Secretary of State's office.

ABSTRACT OF RECORD An abbreviated or partial record.

ABSTRACT OF TITLE A condensed history of the chain of title to land, used to determine or establish present ownership.

ACCESSORY One who knowingly and intentionally contributes to or aids in the commission of a crime, before or after, but not necessarily during, the commission of a crime.

ACCOMPLICE One who participates in the commission of a crime, other than the person actually doing the act constituting the crime.

ACQUIT To find not guilty and set free.

ACQUITTAL A judgment of not guilty in a criminal case.

ACTION, CASE, LAWSUIT, CAUSE These words mean the same thing. They all refer to a legal dispute brought before a court.

ACTIVE CASE Pending case; not disposed of.

AD DAMNUM The amount of the plaintiff's claim of damages in a civil case.

AD VALOREM According to the value.

ADDITUR The power of the trial court to increase the amount of an award made by jury verdict as an alternative to granting a new trial.

ADJOURN To suspend indefinitely, or until a later stated time.

ADJOURNMENT The postponing or putting off of a case or session of court until another time or place.

ADJUDICATE To determine judicially.

ADJUDICATION The final judicial determination of a case by a finding of guilt or innocence by a trial court in a criminal case or the giving of a judgment or a decree in a civil case.

ADMINISTRATOR The chief administrative officer of a court (usually "court administrator"). An outdated probate term referring to a person to whom authority to administer the estate of a deceased person has been granted by the proper court. Changed to personal representative in 1978. (See Fiduciary).

ADMINISTRATOR DE BONIS NON An outdated probate term for a person appointed by the probate court to administer that part of a decedent's estate which has not already been administered. Changed to personal representative in 1978.

ADOPTION The act by which a person takes the child of another into his or her family and makes the child, for all legal purposes, his or her own child.

ADULT A person who has attained the age of majority. In criminal cases, the age of majority is 17 years. For most other proceedings, the age of majority is 18 years.

ADVERSARY PROCEEDINGS An action contested by opposing parties.

ADVERSE POSSESSION A method of acquiring title to land by possession under a claim of right for a prescribed period of time without receiving a valid deed or conveyance from the legal owner.

AFFIANT One who, being sworn, makes and signs an affidavit; a deponent.

AFFIDAVIT A written statement of fact that is verified by oath or affirmation.

AFFINITY The relationship that exists as a result of a marriage, between a wife and her husband's relatives, or a husband and his wife's relatives, as distinguished from relationship by blood.

AFFIRMATIVE ACTION An effort by an employer to:

- 1. Identify all barriers in the personnel or management system which limit the ability of applicants and employees to reach their full employment potential, without regard to race, sex, religion, or national origin.
- 2. Eliminate all such barriers by implementing special programs.

ALIAS SUMMONS A second or subsequent summons issued after the originally issued summons expires without being served.

ALIMONY A sum of money which a court orders a spouse to pay to his or her separated or divorced spouse for support, aid or maintenance, not for child support.

ALLEGATION A declaration, assertion or claim of fact or law.

AMICUS CURIAE One who is not a party to a case but who is interested in or affected by its outcome and is allowed by the court to introduce argument or evidence to assist the court in adjudicating the case.

ANCILLARY That which is part of but subordinate to some other proceeding.

ANCILLARY ADMINISTRATION Administration of an estate in another jurisdiction where a decedent had property but where the decedent did not live.

ANCILLARY PROCEEDINGS A proceeding which is subordinate to the primary action.

ANCILLARY SUIT A lawsuit growing out of and supplementary to another suit, i.e., a suit seeking enforcement of a judgment.

ANNOTATIONS Brief summaries of the facts and decisions of cases interpreting statutes.

ANNUL To make void or of no effect. To annul a judgment or judicial proceeding is to deprive it of all force and authority.

- **ANNULMENT** A court order declaring that a marriage or other agreement or contract was invalid or not legal.
- **ANSWER** The legal paper in which the defendant answers the claims of the plaintiff in a lawsuit.
- **ANTENUPTIAL** Made or done before marriage. Usually an agreement regarding how property is to be distributed upon the death of one of the marriage partners.
- **APPEAL** An application to a higher court to change the judgment of a lower court.
- **APPEAL BY APPLICATION OR LEAVE** An appeal where permission first must be obtained from the higher court.
- **APPEAL BY RIGHT** An appeal to a higher court where permission does not first have to be obtained.
- **APPEAL RECORD** The record sent by the trial court of what happened at the trial court. Must be either a copy of the court record and transcripts or a settled record.

APPEARANCE

- 1. Coming into court the formal act by which a defendant submits to the jurisdiction of a court.
- 2. Document identifying one who is representing himself or another. An attorney files an "appearance," making it known to the court and the other parties that (s)he is representing a specific individual.
- **APPELLANT** The party appealing a decision or judgment to a higher court.
- **APPELLATE COURT** A court which reviews lower court decisions, generally on the record of the lower court. Cases from the district courts are appealed to the circuit court. Cases from the circuit court are appealed to the Court of Appeals and then to the Supreme Court. Cases from the probate court are appealed to both the circuit circuit and the Court of Appeals.
- **APPELLEE** The party against whom an appeal is taken.
- **APPLICATION** Placing a request or petition before the court. The act of making the request.
- **APPLICATION FOR LEAVE TO APPEAL** A document requesting the appellate court to hear a party's appeal from a judgment when the party has no appeal of right or the time limit for his appeal of right has expired. An "application for leave to appeal" must be made if one wishes to have the court consider one's appeal where there is no appeal of right. It remains at the Court's discretion to accept or reject an application.
- **ARBITRATION** A procedure for the determination of a disputed matter by one or more private, unofficial persons. Legally binding as opposed to mediation.
- **ARRAIGN** To bring a prisoner to a court for the purpose of having the prisoner answer the charge against him or her, and set bail.
- **ARRAIGNMENT** A hearing by the court in which the defendant is informed of the charges against him or her, is appointed counsel if necessary, and is permitted to plead to the charges. Pretrial motions may be made, and bail is set.

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ARREARAGE Money which is overdue and unpaid; usually child support.

ASSETS (**IN PROBATE**) All of the property available to the personal representative for payments of debts, charges and expenses and for distribution to the parties entitled thereto.

ASSIGNMENT

- Assignment of Cases: the system or method that a court uses to assign cases to the judges of the court.
- 2. Assignment of Counsel: refers to the appointment of attorneys for indigent criminal defendants.
- 3. Assignment of Judges: the function performed by the State Court Administrative Office in assigning judges to the various courts to handle vacancies caused by vacations, illness, etc., or to help reduce the number of cases pending in a court.
- **ASSUMPSIT** A common law action by which compensation for damages may be recovered for the non-performance of a contract.
- **ATTACHMENT** The act of seizing a person or property under the authority of a judicial order so that the person or property is before the court, subject to its judgment.
- ATTEST, ATTESTATION Signing as a witness to the execution of a written document.
- **ATTORNEY** A lawyer; a person admitted to legal practice in the state qualified to represent the legal interests of another person.
- ATTORNEY IN FACT The attorney acting in a fiduciary capacity under a "power of attorney."
- **ATTORNEY OF RECORD** The attorney named in the records or file of a case who bears the responsibility for the handling of the case on behalf of the party he or she represents.
- AUTHENTICATED Certification of original or copy of recorded document.
- **AVERMENT** See allegation.
- **BACKLOG** Total inventory of cases at issue (in civil cases) or defendants arraigned (in criminal cases) and awaiting trial.
- **BAIL** A method of pretrial release of an accused person by means of having accused or someone on his or her behalf post security to insure his or her appearance at later proceedings, such as trial.
- **BAILIFF** A court employee who maintains order in the courtroom and who is responsible for the custody of the jury, among other functions.
- **BAIL BOND** A financial obligation signed by the accused and those who serve as sureties to guarantee his or her future appearance in court.
- **BAILMENT** A delivery or deposit of personal property by a person (the bailor) to another person (the bailee) for a particular purpose or period of time.
- **BENCH WARRANT** An order issued by the court, ("from the bench") for the arrest of a person for violating a court order.

BENEFICIARY

- 1. One who receives benefits under a trust or a will.
- 2. The person who is entitled to receive payments under an insurance policy.
- **BEQUEATH** To give personal property by a will.
- **BEQUEST** Former term used for gift of personal property by a will. Under the Revised Probate Code, now called a devise.
- **BIND** To create a legal obligation upon one's self or upon another.
- **BIND OVER** To hold for trial; a finding at a preliminary examination that sufficient evidence exists to require a trial on the charges made against the defendant.
- BOND A promise or contract to do or perform a specified act(s) or to pay a penalty for failure to perform, usually guaranteed by a "surety" who promises to pay if the "principal" defaults, or by deposit of money as a "cash bond." Means basically the same as "bail" on criminal cases; contract to pay; security. A contract to pay when another person defaults a surety. A contract to act as surety and to pay where the principal defaults. It is given by public officers to guarantee honest and faithful performance of their official duties while in office.
 - If the principal defaults, the surety has to pay, and the surety can then collect from the principal. Not the same as insurance.
- **BRIEF** A written argument submitted to the court by counsel setting forth facts and/or law supporting his or her client's case.
- **BURDEN OF PROOF** The duty to establish a fact or facts in dispute. In criminal cases, the prosecution must prove its case "beyond a reasonable doubt." In civil cases, the plaintiff must prove its case by a "preponderance of the evidence."
- **CETA** Comprehensive Education and Training Act. An act of Congress which provides funds to State and local government for the hiring and training of additional public employees.
- **CALENDAR** A list of all pending cases, or all pending issues ready for trial in court. A court's complete trial (etc.) schedule. Often used interchangeably, but improperly, with "docket."
- **CALENDAR AUDIT** Review of status of all cases on active lists. The audit might result in the removal of cases from the calendar and identification of cases which have been delayed excessively.
- **CANONS OF ETHICS** A document which outlines the professional responsibilities and goals of doctors, lawyers, judges, etc. In Michigan the canons for judges are called The Code of Judicial Conduct and for lawyers, The Michigan Rules of Professional Conduct.
- **CAPIAS** A bench warrant, issued when a defendant does not appear in court when required to do so; court-issued warrant for arrest.
- **CASE, LAWSUIT, CAUSE** All refer to a legal dispute brought into court. The events, facts and circumstances which entitle a person to recover damages or other remedies by bringing a civil case, action or lawsuit in a court of law.

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CASEFLOW The management of cases through the court; the passage of cases through the court system. (Ideally cases are to "flow" through the judicial process in a smooth, orderly manner, hence the name "caseflow").

- **CASELOAD** The number of cases a judge handles in a specific time period.
- **CERTIFICATION** As pertains to mental health: The written conclusion and statements of a physician that an individual is a person requiring treatment together with the information and opinions in reasonable detail which underlie the conclusion.
- **CERTIFIED COPY** A copy of a document, order or record of the court, or other public office, signed and certified as an exact and true copy by the officer of the court having custody of the original.
- **CERTIFY** To vouch for something in writing; to put in writing a statement. To attest in writing to the authenticity and accuracy of a written instrument or document, or a copy of it.
- **CERTIORARI** An order by an appellate court directing a lower court to certify and forward the record of a case for judicial review for legal error. This term is obsolete in Michigan.

CHALLENGE

- 1. To ask that a member of the jury panel be excused.
- 2. To question or dispute an action.
- **CHALLENGE FOR CAUSE** To ask that a member of the jury panel be excused because there appears to be a specific reason, set out in the court rule, that one is not legally qualified to act as a juror in this case.
- **CHALLENGE TO THE ARRAY** To question the qualifications of an entire panel summoned for jury duty, usually because of alleged partiality or some deficiency in the manner by which the panel was selected and summoned.
- **CHANGE OF VENUE** A transfer or removal of a case to a court of another territorial location and jurisdiction, either because it should have been commenced there in the first place, or for the convenience of the parties or witnesses, or because a fair trial cannot be had in the original court location.
- **CHARGE TO THE JURY** A judge's instructions to the jury which contain information about the laws which relate to the issues to be decided in a case.
- **CHATTELS** Personal property as opposed to real property.
- **CHIEF JUDGE** In trial courts with two or more judges, one judge is selected as chief judge. The chief judge represents the court in its relations with other agencies and the public. In addition the chief judge is the director of the administration of the court.
- **CHILD ABUSE** Mistreatment of a minor by an adult legally responsible for the minor.
- **CHILD CARE FUND** State funds set aside to reimburse counties for part of the payments for the foster care and expenses of children.
- **CHILD CARE RULES** The administrative rules for the care of children in foster care.

CHILD NEGLECT A failure to properly care for the emotional or physical needs of a minor.

CHILD SUPPORT See support.

- **CHILD SUPPORT GUIDELINES** A guideline of factors used by the Friend of the Court and Prosecuting Attorney when recommending an appropriate amount of child support. Both the noncustodial and custodial parent's income are factors considered in the determination of child support under the guidelines.
- **CIRCUIT COURT** The trial court of general jurisdiction in Michigan. Felonies and civil cases over \$25,000 are tried in this court. The Family Division handles cases involving domestic relations, juvenile proceedings, and other family matters. Circuit Court has superintending control over the District Court and Probate Court in the Circuit.
- **CIRCUIT COURT MISDEMEANOR** Includes any offense which the statute designates as a misdemeanor which is punishable by more than one year imprisonment. It is processed in Circuit Court exactly like a felony.

CITATION

- 1. The court copy (original) of the "traffic ticket" is the citation, and also serves as the original complaint in the case.
- 2. Also can be reference to an authority (such as case or statute), that supports a statement of law or from which a quotation is taken. Citations occur most frequently in briefs.
- **CITATORS** Books or services which provide, through letterform abbreviations or words, the judicial history and interpretation of reported decisions, and information as to cases and legislative enactments construing, applying or affecting statutes.
- **CIVIL ACTIONS OR LAWSUITS** Generally, non-criminal cases concerning the claim of one private individual against another.
- **CIVIL INFRACTION** An act or omission prohibited by law which is not a crime, for which civil sanctions may be ordered. Many traffic violations are classified as civil infractions.
- **CIVIL INFRACTION DETERMINATION** A decision whether or not a person is responsible for a civil infraction by one of the following:
 - 1. An admission of responsibility for the civil infraction.
 - 2. An admission of responsibility for the civil infraction with an explanation.
 - 3. An informal hearing or formal hearing.
 - 4. A default judgment, for failing to appear at a scheduled informal or formal hearing.
- **CIVIL INFRACTION FORMAL HEARING** A hearing conducted only by a District Court Judge involving the police officer, defendant and all witnesses. Defendant may be represented by an attorney and a prosecutor must be present.
- **CIVIL INFRACTION INFORMAL HEARING** A hearing conducted by a District Court Magistrate or Judge involving the police officer, the defendant and any witnesses, held without a prosecutor or defense attorney. The determination may be appealed to a formal hearing.
- **CIVIL INFRACTION SANCTION** The penalty imposed upon a person found responsible for a civil infraction: the assessment of fine and costs, the mandatory attendance of a corrective program such as driver's training program, drug or alcohol abuse program.

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- **CIVIL LAW** Laws regarding the establishment, recovery, or redress of private and civil rights.
- **CLAIM** Debts arising at or before death include funeral and burial expenses of decedent. Also debts of minors, legally incapacitated persons, disappeared persons, or wards.
 - 1. Contingent Claim: A claim for expenses not yet incurred and which is dependent on some future event which may or may not happen.
 - 2. Tardy Claim: A claim filed after the date for the final presentation of claims.
- **CLAIM OF APPEAL** The form or paper that is filed indicating an appeal is being taken. The original is filed with court where appeal is going to take place and copy with trial court.
- **CLAIMANT** One who has a claim to or makes a claim to something.
- **CODE** A grouping of statutes, relating to a particular subject matter and arranged in classified order. Usually created by enactment of a new statute by the legislature embodying all the old statutes relating to the subject and including changes necessitated by court decisions. In some cases, the change would result in a new statutory concept. Examples: The Revised Probate Code, The Uniform Commercial Code, etc.
- **COLLATERAL** Money or goods given to secure payments of a debt (civil law) or to insure appearance in court (criminal law).
 - Collateral matters are matters related to but not legally relevant to the question before the court.
- **COMMIT** The act of sending a person to a prison, reformatory, mental hospital or other facility, pursuant to a court order.
- **COMMITMENT** The order by which the court directs:
 - 1. The sending of a person to a prison or jail in execution of sentence.
 - 2. The sending of a person to a hospital because of a mental disorder.
- **COMMON LAW** A system of laws which has evolved from early days to the present consisting of old and accepted customs, precedents and court decisions, old English statutes and other unwritten but accepted standards. Common law is the foundation for the legal system in every state of the United States except Louisiana. In Michigan, the common law is still in effect except where is has been modified or repealed by statute.
- **COMMON PLEAS COURT** This Court was abolished in 1981 and was merged into the 36th District Court. It was a civil court in the City of Detroit which had exclusive jurisdiction in civil matters up to \$5,000 and concurrent jurisdiction with Wayne County Circuit Court in cases where debt or damages did not exceed \$10,000.
- **COMPETENCY** The presence of those characteristics, which make a witness legally fit and qualified to give testimony in court applied, in the same sense, to documents or other written evidence.
- **COMPETENT** Legally sufficient, relating primarily to evidence and witnesses in a court action, i.e., competent to stand trial.
- **COMPLAINANT** One who makes a complaint, often interchanged with plaintiff and victim.
- **COMPLAINT** The original pleading in a civil action means the original pleading in which the plaintiff alleges the basis for the suit. Complaint in a criminal action means a written accusation, under oath or upon affirmation, that a felony, misdemeanor or ordinance violation has been committed, and that there is probable cause that the person is guilty of the offense.

CONDEMNATION The process by which private real estate is taken for public use without the owner's consent but with just compensation, pursuant to a court order - a forced sale for public use. Destruction ordered for public health or safety. In such cases, there is no taking for a public use and thus there is no compensation.

- **CONFESSION** A statement by person, either oral or written, admitting that he committed a certain offense. The statement must include all of the elements of the offense, or it is not a confession but an admission. An oral or written statement is not necessarily a confession.
- **CONSANGUINITY** A relationship created by blood; persons who descend from a common ancestor.
- **CONSENT CALENDAR** A schedule of informal hearings involving a child in which it appears it will serve the best interests of the child and society, with the consent of the child and all interested parties, to hear the case informally. The schedule or calendar upon which such informal hearings are placed is called the "consent calendar."
- **CONSERVATOR** A person appointed by the court, as provided in the Revised Probate Code to manage and protect the estate of a minor or person under legal disability because of mental illness, mental deficiency of physical illness or disability.
- **CONSPIRACY** An unlawful agreement to commit a crime or do a lawful act in an illegal manner. Conspiracy is a crime in Michigan.
- **CONTEMPT OF COURT** An act which hinders or obstructs a court in the administration of justice or lessens its authority or dignity. Contempts are of two kinds:
 - 1. Civil contempt: Refusal or failure to obey a court order for which the penalty is limited to enforcement of compliance with the order, and payment of costs to the other party. Civil contempt is usually committed outside the presence of the court.
 - 2. Criminal contempt: Contempt, usually committed in the view and presence of the court, which is punishable by penalties of fines and costs payable to the court or imprisonment.
- **CONTINUANCE** Postponement of an action pending in court. See adjournment.
- **CONTRACT** An exchange of oral or written promises between two or more parties to do or not do a particular thing.
- **CONVERSION** The wrongful exercise of the right of ownership or control over goods which belong to another.
- CONVEY To transfer title to property; to transport, carry; to make known, communicate.

CONVEYANCE

- 1. The transfer of a title to property from one person to another.
- 2. The instruments in writing (documents) which effect the transfer of title.

CONVICT

- 1. To find or adjudge guilty of a criminal offense.
- 2. One who has been convicted of a criminal offense.
- **CORPUS DELICTI** The body of the crime. That which the prosecutors must prove (that a crime was committed) before introducing a confession or admission into evidence.

- **COUNSEL** An attorney; one who gives advice, especially legal advice.
- **COUNTERCLAIM** A claim asserted by a defendant against the plaintiff in the course of suit; in essence, a counter-lawsuit within a lawsuit.
- **COUNTY AGENT** Juvenile Officer The juvenile officer is an officer of the juvenile court and serves under the supervision of the probate judge to direct and develop the child welfare work of the court.
- **COURT OF APPEALS** The court in which appeals from the probate and circuit courts are heard and decided.
- **COURT OF CLAIMS** Has the authority to hear only claims against the State of Michigan. As a general rule, a state cannot be sued without its consent. Michigan granted that consent by establishing the Court of Claims, which has jurisdiction over claims above \$100, except where the Circuit Court has jurisdiction. Since 1979 the Court is administratively housed within the Ingham County Circuit Court.
- **COURT CONGESTION** An accumulation of cases impeding the timely movement of those cases through the judicial process.
- **COURT OF RECORD** A court whose proceedings are by law permanently recorded by a public officer other than the judge; they have the power to fine or imprison for contempt. Courts not of record have less authority and their proceedings are not permanently recorded. The only courts not of record in Michigan are municipal courts.
- **COURT RECORDER** A court official who records the activities of a court using an electronic recording device, usually for the purpose of preparing a verbatim transcript.
- **COURT REPORTER** A person who records the activities of a court using manual shorthand, a stenotype machine or a stenomask.
- **COURT REPORTING AND RECORDING BOARD OF REVIEW** A Board appointed by the Supreme Court to administer the certification of court reporters and recorders.
- **COURT SYSTEM** Consists of: Michigan Supreme Court, Court of Appeals, Circuit Court, District Court, Probate Court, Municipal Court, Court of Claims. See the name of each court for descriptions of individual courts.
- **CRIME** An act in violation of criminal law; an offense against the State of Michigan. Punishable by imprisonment or a fine other than a civil fine.
- **CRIMINAL** One who has committed a criminal offense; one who has been legally convicted of a crime; one adjudged guilty of a crime.
- **CRIMINAL CASE** A lawsuit is called a criminal case when it is between the People of the State of Michigan on one side as plaintiff, and a person or corporation on the other as defendant and involves a question of whether the defendant has violated one of the laws defining crimes.
- **CRIMINAL LAW** The statutes that forbid certain actions or conduct as detrimental to the welfare of the state and that provide punishment. Criminal acts are prosecuted by the Prosecuting Attorney.

CROSS APPEAL An appeal taken by the appellee after the original appeal has been filed. In a cross appeal, the original appellee would be the appellant but only for purposes of the cross appeal.

- **CROSS EXAMINATION** The questioning of a witness by the opposing party to test the truthfulness of the witness's testimony, to further develop it or to otherwise expand on it.
- **CUSTODY** Care and keeping of anything, i.e., children in a divorce action or a defendant in a criminal action.
- **CUSTODY STATEMENT** In some circumstances a child in custody is not released to his/her parent(s), guardian, etc., but is detained by the court. When this occurs, the officer taking the child in custody must prepare a statement setting forth the grounds for detention and submit this report to the court. It is called a "custody statement."
- **DAMAGES** Money paid to a person who has been injured by the actions of another person.
- **DE BONIS NON** Obsolete term. An abbreviation of De Bonis Non Administratis. See De Bonis Non Administratis.
- **DE BONIS NON ADMINISTRATIS** Obsolete term. Of the goods not administered. Where the administration of the estate is left unfinished, because of death, removal, etc., of the personal representative and a new personal representative is appointed, the latter is termed "De Bonis Non." Usually referred to as a successor personal representative.
- **DE NOVO** Latin. Means "anew", for example, a trial de novo is a trial anew or a new trial, as opposed to a mere review of the record of the first trial. Means to start over from beginning. For example, appeals from the Probate Court are not de novo, but rather on the record of what happened in the Probate Court.
- **DECEDENT** A deceased person.
- **DECLARATORY JUDGMENT** A judgment of a court determining the rights of the parties or giving the court's opinion on a legal point, without ordering that anything be done. A declaratory judgment is usually requested before the happening of (and in order to prevent) any specific act which could result in a claim for damages.
- **DECREE** A court judgment in the chancery side of the court. A final decree is one fully and finally disposing of a case; an interlocutory decree is preliminary in nature, determining some issue in the case but not the ultimate question involved.
- **DEFAULT** A failure to do what ought to be done, i.e., when a defendant doesn't plead within the time allowed or fails to appear for trial.
- **DEFAULT JUDGMENT** Action taken by the court when a person fails to appear in court in answer to a summons in a civil case.
- **DEFENDANT** The person against whom a lawsuit is started or a crime charged.
- **DEFENSE ATTORNEY** The attorney representing the accused (defendant).
- **DEFERRED PROSECUTION** Diverts a suitable defendant to a type of probation. The defendant is placed on special probation without ever having to go through court.

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DELAY Time periods between phases in the processing of cases through the judicial system.

DELAYED APPEAL An appeal after the time for taking an appeal has run out and the higher court has granted permission to appeal because of some special circumstances.

DELIBERATE

Criminal Cases. As applied to a jury, the weighing of the evidence as relating to the law, for the purpose of determining the guilt or innocence of a defendant.

Civil Cases. As applied to a jury, the weighing of the evidence for the purpose of determining the facts at a hearing.

DEMUR To dispute the sufficiency of the law upon which the opposing side bases its argument.

DEMURRER Obsolete term in Michigan. Formerly, a response to a complaint alleging that even if the facts alleged in the complaint are true, they do not create any liability and therefore do not warrant any further proceedings in the matter.

DENIAL

- 1. A refusal by a court to grant a request presented by petition or motion.
- 2. In pleadings, an assertion that the allegations of the opposing party are untrue.

DEPONENT One who gives a deposition.

DEPOSITIONS Testimony taken down and transcribed in writing by question and answer under oath of a party or other witnesses who because of illness or distance or other good reason cannot be in court. This is read in court and to the extent it is admitted by the judge becomes evidence just as if the person were physically present. Videotaped depositions are also permitted.

DESCENT There are two sorts of descent: lineal and collateral.

- 1. Lineal descent is descent in a direct or right line, as from father or grandfather to son or grandson.
- 2. Collateral descent is descent in a collateral or oblique line; that is, up to the common ancestor and then down from him, as from brother to brother, or between cousins.

DETENTION The temporary care of a child who requires custody for his or her own or the community's protection pending disposition by the court or execution of an order of the court for placement or commitment. Also, holding cell or area in Circuit and District Court for defendants in custody pending appearances in court.

DEVELOPMENTAL DISABILITY An impairment of general intellectual functioning or adaptive behavior as described in the Mental Health Code.

DEVISE Under the Revised Probate Code, the term used for a gift of personal or real property.

DEVISEE A person given property under a will.

DICTUM See "Obiter Dictum."

DILATORY DEFENSES Defenses made solely for purposes of delay.

DILATORY FIDUCIARY A fiduciary (trustee) who causes undue delays in administering an estate.

DILATORY MOTION A motion made only for purposes of delay.

DILATORY PLEA A response to a lawsuit which has the object of delaying the action, without responding to the merits of the lawsuit.

- **DIRECTED VERDICT** If after presentation of evidence by one or both sides the judge holds that there is no issue of fact for the jury to decide, he or she will instruct the jury on the verdict to be returned and the jury will return such verdict.
- **DISAPPEARED PERSON** Absent from place of abode for at least seven continuous years; whereabouts unknown by person most likely to know whereabouts (for seven years as above); has not communicated with person above.
- **DISCONTINUANCE** The termination of a civil case by withdrawal or failure to continue it by the plaintiff. A voluntary dismissal by the plaintiff.
- **DISCOVERY** Procedures available to a party to a lawsuit, or petition for a particular request to ascertain facts relating to the issue to be determined which are known to other parties or witnesses, in order to enable the party to prepare for trial.
- **DISMISS** To order a cause or prosecution to be terminated; to refuse to hear further.
- **DISMISSAL** An order or judgment deciding a particular lawsuit in favor of the defendant by sending it out of court without trial. Dismissal "with prejudice" forever bars the right to bring a lawsuit on the same claim or cause; dismissal "without prejudice" disposes of the particular lawsuit before the court but permits a new lawsuit to be brought based on the same claim or cause.
- **DISPOSED CASE** Not pending; decided; closed case.
- **DISPOSITION** Determination of a case, whether by dismissal, plea and sentence, settlement and dismissal, verdict and judgment.
- **DISQUALIFICATION** Refers to the disqualification of judges from hearing a case. Any interest which may impair the ability of a judge to decide the case in a fair and impartial manner. Disqualification is usually voluntary; however, it may be done on the motion of a party to the case.
- **DISSENT** The disagreement of one or more judges of an appellate court with the decision rendered by the majority.
- **DISTRIBUTEE** One who receives property from a personal representative (but not a creditor or purchaser); a testamentary trustee to the extent of assets remaining in his hands; a beneficiary takes through a trustee.
- **DISTRIBUTION** The division of the residue of an estate among the parties entitled thereto by the order of the court, after the payment of the debts and charges. It also includes the division of the residue of an estate by the Independent Personal Representative.
- **DISTRICT COURT** All criminal cases are commenced in district court. Felony cases may be bound over to circuit court after preliminary examination or waiver. Misdemeanors are tried in district court. Civil cases under \$25,000 and summary proceedings for possession of real estate constitute most of the civil caseload.
- **DIVERSION** A decision or program designed to divert offenders from official processing to a less formal, less adversarial and more community-based setting.

6-03-14 / Reference Materials (9/99)

- **DIVORCE** The termination of the legal relationship between a husband and wife.
- **DNR** An abbreviation for the Michigan Department of Natural Resources.
- **DOC** An abbreviation for the Michigan Department of Corrections.
- **DOCKET** This word is often used interchangeably with "calendar." It refers to a specific jurist's calendar. Also improperly defined as the case history; see Register of Actions.
- **DOMICILE** The permanent home to which a person, when absent, always intends to return. (See Residence.)
- **DOUBLE JEOPARDY** Being placed more than once in danger of being convicted and sentenced for the same offense.
- **DOWER** That part of a man's real property which his widow is entitled to use for her lifetime after her husband's death, as a result of her status as wife, as opposed to property devised or inherited.
- **DUCES TECUM** Latin. It means "bring with you." On a subpoena it means that you must bring your records or other specified material into court with you.
- **DUE PROCESS (OF LAW)** The fundamental rules which guarantee "fair play" in the conduct of legal proceedings; i.e., the right to an impartial judge and jury, the right to present evidence on one's own behalf, the right to confront one's accuser, the right to be represented by counsel, etc.
- **EASEMENT** A right to use land of another for a special purpose, such as crossing their land to gain access to yours if there is no other entrance.
- **ENJOIN** To forbid; restrain.
- **EQUAL PROTECTION** The Constitution requires that the government and courts of a state be open and available to all persons under the same conditions with like rules of procedure and evidence.
- **EQUITY** A system of law and legal remedies which arose in common law England to provide remedies which the common law could not provide. It became a part of American jurisprudence along with the common law. The procedural distinctions between law and equity have been abolished by statute, but the substance remains, along with many of its terms. A "judgment" in law is called a "decree" in equity, as in a divorce case.
 - The amount or value of property above the total liens, charges or encumbrances.
- **ESCHEAT** The reversion of property to the State, when a person dies leaving no heirs.
- **ESTATE** The interest a person has in real or personal property; property left when a person dies. The assets of a decedent or other person subject to be administered under the authority of a court.
- **ESTOPPEL** A prohibition against a claim or position which is inconsistent with the claimant's prior conduct, e.g., one who sells land representing that he/she is authorized to do so may not claim in a later lawsuit against him or her that he or she had no authority to sell.

EVIDENCE Testimony, exhibits or other proof, presented at the trial for the purpose of inducing belief in the minds of the court or jury.

- **EVIDENTIARY MOTION HEARING** Hearings at which evidence is presented (a "speaking motion") as opposed to a hearing at which lawyers argue matters of law.
- **EX PARTE** By or for or on the request of one party only, without notice to any other party.
- **EX PARTE INJUNCTION** An injunction issued without prior notice to the adverse party.
- **EX PARTE MOTION** A motion made to the court without notice to the adverse party.
- **EX PARTE ORDER** An order made by the court upon the application of one of the parties to an action without notice to the other, and sometimes without a hearing.
- **EX POST FACTO** Legislation made applicable to an act after the act was committed. Statutes making a prior legal act illegal.
- **EXAMINATION** An inspection or investigation. As pertains to court action, the term is used to describe a preliminary hearing before the District Court to determine whether or not there is sufficient cause to hold a person to answer a felony charge before the Circuit Court.
- **EXECUTE** The term means "to carry out, complete or dispose of according to law."
- **EXECUTION** A post judgment remedy to collect a money judgment. A writ issued by the court to authorize the process server to seize or take possession of real or personal property to be sold to satisfy the judgment.

The carrying out of some act or course of conduct to its completion; i.e., execution of a civil judgment is the putting into effect of the final judgment of the court by obtaining possession of that which the judgment has awarded.

- **EXECUTION OF AN INSTRUMENT** The signing, sealing and delivery of a written instrument or document.
- **EXECUTOR, EXECUTRIX** Executor (male). Executrix (female). Former terms for a person named in a will to carry out its terms, that is, to execute the will. Under the Revised Probate Code, now called a personal representative.
- **EXEMPT PROPERTY** Personal property that the surviving spouse of a decedent is automatically entitled to receive from the decedent's estate.
 - Property of a judgment debtor that is exempt from executions under either state law or federal bankruptcy law.
- **EXONERATE** To free from suspicion; to show someone to be free of guilt.
- **EXPUNGE** To legally void or supplement prior records in files, computers or other depositories.
- **EXTRADITION** The formal process of delivering a person found in one state to the authorities of another state where that person has been accused or convicted or a crime.

6-03-16 / Reference Materials (7/97)

FAC CASE Stands for "Failure to Answer Citation." When a person fails to answer a traffic citation (ticket) the court concerned notifies the Department of State, which enters this information into its computer system. When this occurs it is called a "FAC Case," and the defendant's license is suspended until the FAC is set aside after the case is disposed of, and a fee is paid.

- **FCJ CASE** Means failure to comply with judgment imposed for violations that are civil infractions that are issued on traffic violations and follows the same procedure as FAC cases.
- **FCPV CASE** Means failure to comply with parking violation entries. The Secretary of State will prohibit individuals from obtaining or renewing licenses when they have six or more unpaid parking tickets within a court. The court concerned notifies the Department of State in the same procedure as in FAC and FCJ cases.
- **FEES** A charge fixed by law for services of public officers or for use of a privilege under government control. A charge or wages for services given to one for the services performed, such as fiduciary or attorney fees.
- **FELONY** A crime punishable by more than a year in the state prison, unless it is specifically stated to be a misdemeanor. Felonies are tried in Circuit Court.
- **FIA** An abbreviation for the Michigan Family Independence Agency.
- **FIDUCIARY** One who has the duty to act primarily for the benefit of another with respect to the subject matter of a trust. A person who is invested with rights and powers to be exercised for the benefit of another person; such as, conservator, guardian, representative, trustee, testamentary trustee, foreign personal representative, etc.
 - 1. Successor Fiduciary: One who is appointed to succeed or replace a prior fiduciary.
 - 2. Temporary Fiduciary: One appointed by the court until a regular fiduciary is appointed; a grant of authority over property limited to a personal representative, trustee or conservator.
- **FILE** To put in the records, or deposit in the custody or among the records of a court.
- **FILING** The act of recording the various legal documents pertaining to a suit with the clerk of the court. "Filing" also specifically refers to the original warrant, complaint, or other document which initiates the action.
- **FILING FEES** Sums of money which must be paid to the court clerk before a civil action or an estate proceeding may start.
- **FOREIGN PERSONAL REPRESENTATIVE** A personal representative from the jurisdiction of another state.
- **FOREIGN SUPPORT ORDER** A support order issued by a state other than Michigan.
- **FORENSIC CENTER** Another name for the Center for Forensic Psychiatry operated by the Department of Mental Health. Criminal defendants are often sent there by trial courts to determine if they are competent to stand trial.
- FORENSIC MEDICINE The science of medicine as connected with the law.
- **FORMAL CALENDAR** If it appears that formal jurisdiction is required in juvenile matters, a petition shall be filed. Further hearings shall be scheduled on the "formal calendar".
- FORMAL HEARING See, Civil Infraction Formal Hearing.

- **FORUM** A court of justice or judicial tribunal. A place of justice or litigation.
- **FOSTER CARE REVIEW BOARD** A board that reviews the permanent plans of foster care placement of neglected and abused children. This board is composed of private citizens.
- **FOSTER HOME, SHELTER HOME, GROUP HOME** The temporary board and care of children in a licensed home or facility supervised by the court, a public or private agency.
- **FRAUD** The intentional communication of an untruth to deceive another to deprive one of property or to induce one to surrender a legal right, or to injure him or her in some other way.
- **FRIEND OF THE COURT** An official connected with the Circuit Court who investigates and advises the Circuit Court in domestic relations cases involving minor children and also provides enforcement of court orders in those cases.
- **FUGITIVE** One who flees; always used in law with the implication of a flight, evasion, or escape from some duty or penalty or from the consequences of a misdeed.
- **FUGITIVE WARRANT** A warrant authorizing the taking into custody of a person who has fled from one state to another to avoid prosecution or punishment for crime.
- **GARNISHMENT** A court order to take part of a person's wages or other money owed to him or her before he or she receives the money, because of an unpaid debt owed to a creditor who has obtained a judgment against the debtor.
- **GRANT** To convey, especially real property.
- **GRANTEE** The person to whom a grant is made. Such as, the person who receives title to real property by deed.
- **GRANTOR** The person who makes a grant or conveyance.
- **GUARDIAN** The person who has the legal duty and power to take care of the person of another, who, because of some disability, usually age or incompetence, is considered incapable of caring for himself or herself. A person appointed by a court or designated as such in a will to exercise power over the person of a minor or a legally incapacitated adult.
- **GUARDIAN AD LITEM** A person appointed by the court during the course of a litigation, in which an infant, incompetent adult, unascertained or disappeared person is a party, for the purpose of protecting the interest of these parties during the litigation.
- **GUILTY** Found beyond a reasonable doubt to have committee a crime.
- **HABEAS CORPUS** "You have the body," the name of a writ used to bring a person before a court or judge. Generally, the writ is addressed to an official or person who holds another. It commends him or her to produce the detained person in court so that the court may determine whether that person is being denied his or her freedom lawfully.
- HABEAS CORPUS AD RESPONDENUM To bring in a prisoner for trial on another charge.
- **HABEAS CORPUS AD TESTIFICANDUM** To bring a prisoner in to testify.

6-03-18 / Reference Materials (9/99)

HARMLESS ERROR An error committed in the course of a trial which does not justify reversal of the verdict on appeal.

- **HEARING** A term for a court proceeding before or after the trial of a suit.
- **HEARSAY** Second-hand evidence not arising from personal knowledge of the witness but generally from repetition of what the witness has heard others say. The repetition of a statement, that was made outside of court, by a witness in a trial, intended to prove the truth of the statement. Hearsay is generally inadmissible, but if there is no objection it is admitted into evidence.
- **HEIR, HEIRESS** A person who inherits or receives property from someone who has died. Person who "takes" or inherits under intestate succession, property of a deceased.
- **HOLOGRAPHIC WILL** An unwitnessed will where the dispositionary portions are in the handwriting of the decedent, signed at the end and dated.
- **HOMESTEAD** An artificial estate in land, devised to protect the possession and enjoyment of the owner against the claims of creditors.
- **HOSTILE WITNESS** A witness who exhibits such antagonism toward the party who called the witness to testify that cross-examination of that witness by that party is permitted by the court.
- **ILLEGITIMATE CHILD** A child born to parties who are not married to each other.
- **IMPANEL** (As pertains to juries.) To select a jury and enroll their names.
- **IMPEACHMENT OF WITNESS** Questioning of a witness by an adverse party that attempts to cast doubt on the credibility (believability) of the witness.
- **INACTIVE CASE** A pending case over which the court has no effective control; a case which is filed in the court, but for some reason cannot be processed by the court; examples: non-service, no progress (civil); defendant absconded or never arraigned (criminal). Also includes case which are closed; for which further action is unlikely to be taken because final judgment has been entered and the appeal period has passed.
- **INCARCERATION** Commitment to jail or prison.
- **INCOMPETENT EVIDENCE** Inadmissible evidence.
- **INCOME WITHHOLDING ORDER** An order entered by the Circuit Court providing for the withholding of a person's income to enforce a support order.
- **INDEPENDENT PERSONAL REPRESENTATIVE** Person administering a decedent's estate under the Revised Probate Code.
- **INDEPENDENT PROBATE** Probate designed to operate without unnecessary intervention by the Probate Court as provided for by the Revised Probate Code.
- **INDICTMENT** Formal accusation, "true bill," presented by a grand jury which charges a person with a crime.
- **INDIGENT** Impoverished; needy; poor; without funds.

INFERIOR COURT Lower court. Any court subordinate to the chief appellate court in a particular judicial system.

- **INFORMAL HEARING** See, Civil Infraction Informal Hearing.
- **INFORMATION** A formal accusation (criminal information) of a crime, differing from an indictment in that it is prepared and signed by the prosecuting attorney instead of the grand jury. This is the most common means employed in Michigan to bring an accused before the circuit court after a bindover from the district court.
- **INHERITANCE** Property received by will or by law from someone who dies.
- **INJUNCTION** A writ restraining a person from doing or continuing to do something that threatens or causes irreparable injury; or requiring the defendant to do a particular act. See "Restraining Order;" "Enjoin."
- **INJUNCTION, PERMANENT** An injunction intended to remain in force unless and until modified by a later decree of a court.
- **INJUNCTION, PRELIMINARY** An injunction granted during the pendency of a suit, to restrain a party from doing or continuing some act, the right to which is in dispute, and which may either be discharged or made perpetual, according to the result of the controversy, as soon as the rights of the parties are determined. Also called a temporary injunction.
- **INNOCENT** Not found to be guilty; acquitted.
- **INQUEST** A legal inquiry generally before a court of law but in some instances before certain other officers legally empowered to hold inquiries, such as by a medical examiner investigating a death.
- **INSTRUCTIONS TO JURY** A direction given by the judge to the jury concerning the law of the case; a statement made by the judge to the jury informing them of the law applicable to the case.
- **INTERSTATE INCOME WITHHOLDING ORDER** An order entered to secure the enforcement of support obligations by the withholding of income derived in this jurisdiction to enforce the support order of another jurisdiction.
- **INTERESTED PARTY** A probate court term for one of the following: heir, devisee; beneficiary; a fiduciary of a legally incapacitated person who is an heir, devisee or beneficiary; a fiduciary or trustee named in an instrument involved; or a special party.
- **INTERESTED PERSON** A probate court term for one of the following: interested party; creditor; surety; any person having a property right in a trust estate or estate of decedent or ward who is affected by the proceedings; includes person nominated as personal representative; or a fiduciary representing an interested person.
- **INTERIM BOND** Refers to a bond that is set by a police officer when a person is arrested for a misdemeanor minor offense without a warrant. Any misdemeanor warrant may also have an interim bond endorsed on it by the issuing judge or magistrate. Allows one to be released but available for an arraignment.
- **INTERIM ORDER** A temporary court decree, which is put into effect until something else is done.

INTERLOCUTORY Temporary; not final, generally decides some point or matter between the beginning and end of a suit but is not a final decision of the case.

- **INTERLOCUTORY APPEAL** An appeal of a decision made by the Court during the course of an action, but before the final order or outcome of the action.
- **INTERPLEADER** A legal action enabling a person to pay monies into court and force two or more persons having competing or conflicting claims against him or her for the same thing to dispute the matter among themselves.
- **INTERROGATORIES** Written questions posed by one party and served on another who must answer them in writing under oath a form of discovery to enable the party posing the questions to prepare for trial.
- **INTER VIVOS** Between living persons.
- **INTESTATE** Dying without having made a valid will.
- **INTESTATE SUCCESSION** Succession by or through a person, both lineal or collateral.
- **INVENTORY** A list of the assets of a decedent or ward required by law to be filed in Probate Court reflecting assets that are subject to management by the fiduciary.
- **INVENTORY FEE** A statutory fee for services rendered to a decedent's estate by the Probate Court.
- **ISSUE** Of a person: All of the person's lineal descendants of all generations, except those who are descendants of a living descendant, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in the Revised Probate Code.
- **ISSUE** (**IN PLEADING**) A single, certain and material point, deduced by the pleadings of the parties, which is affirmed on the one side and denied on the other.
- **JIS** Judicial Information Systems. Provides systems analysis and programming services to courts and various judicial agencies throughout the state. JIS offices are located in Lansing and Detroit.
- JOINT CUSTODY An order of the court in which one or both of the following are provided:
 - 1. that the children live with one parent part of the time and with the other parent part of the time;
 - 2. that the parents both share in making decisions on important issues dealing with the children.
- **JUDICIAL ACTIVITY REPORT** Reports to the State Court Administrator on caseload and court activity of circuit, district, and probate courts.
- **JUDICIAL TENURE COMMISSION** The commission which reviews complaints against judges, investigates those complaints and reports to the Supreme Court recommending appropriate discipline or removal of the judge by the Supreme Court.
- **JUDGMENT** The decision of a court of law.
- **JUDGMENT NOTWITHSTANDING THE VERDICT** Judgment N.O.V. (non obstante veredicto). A judgment rendered in favor of one party notwithstanding the finding of a jury verdict in favor of the other party.

JURISDICTION

1. Area or subject matter of legal control or authority. Not necessarily a geographical area. Example: The circuit court has jurisdiction over divorce cases.

- 2. Also refers to a person or entity over whom or over which the court has some right to decide rights and responsibilities. Example: The court has jurisdiction over a person who has been properly served with a summons in a pending case, or who has been arraigned in a criminal case. The probate court has jurisdiction over estates of decedents who died residents of the county or district in which the court is located.
- **JURISDICTION, CONCURRENT** Where two courts of record have jurisdiction over the same person or a matter. This could be the circuit court (divorce proceedings) and a probate court (delinquency or neglect proceedings); or another probate court.
- **JURISDICTION, WAIVER OF** Where a child 15 years of age or older is accused of any felony act, on application of the prosecutor, jurisdiction over that child may be waived from the probate court to criminal courts in the county where the alleged offense occurred.
- **JURY** A body of men and/or women sworn to consider the evidence presented and to deliver a true verdict or decision in a judicial proceeding. There are six jurors for District Court in civil and criminal matters and six for civil and 12 for criminal matters in Circuit Court. There are six jurors in Probate Court (estates and juvenile cases).
- **JURY COMMISSIONER** The officers responsible for choosing the panel of persons to serve as potential jurors for a particular county.
- **JURY, GRAND** A jury of inquiry which receives complaints and accusations in criminal cases. It hears the prosecutor's evidence and issues indictments when satisfied that there is probable cause to believe that a crime was committed, and that the accused committed that crime. Grand Juries are rarely used in Michigan, but are very common in the federal judicial system.
- **JURY PANEL** The group of prospective jurors, from which the trial jury of 6 or 12 is chosen.
- **JURY, PETIT** The ordinary jury (of 6 or 12 persons) selected to hear the trial of a civil or criminal case and to determine issues of fact; so called to distinguish it from the grand jury.

JUVENILE A minor under the age of seventeen.

JUVENILE CODE The group of statutes dealing with procedures to follow in Juvenile Court.

JUVENILE OFFICER See "County Agent."

KIN One who is related by blood.

LAND CONTRACT A contract for the sale of land on a time payment plan.

LARCENY The trespassory taking of property with the intent to permanently deprive the owner of its ownership rights.

LAWSUIT, CASE, ACTION All refer to a legal dispute brought into court for trial.

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LAWYER See "Attorney."

LEAA Law Enforcement Assistance Administration. The agency of the U.S. Department of Justice responsible for administering law enforcement grants under terms of the Omnibus Crime Control and Safe Streets Act of 1968.

LEASE A contract or agreement for the renting of real or personal property for a specified or determined period of time and giving rise to the relationship of landlord (the lessor) and tenant (the lessee).

LEGACY Former term used for a gift of personal property left by will. Under the Revised Probate Code, now called a devise.

LEGACY RECEIPT Receipt for a legacy received or administered.

LEGALLY INCAPACITATED PERSON (L.I.P.) As used in Sections 3 to 12 and in Article 4 of the Revised Probate Code: Person, other than a minor, who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs or chronic intoxication to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person. Former term: legally incompetent person.

LEGATEE An heir to a bequest; one who receives property under a will.

LEIN Law Enforcement Information Network. A communications system and computer containing files on wanted persons' and drivers' records and automobile registration.

LESSEE The tenant under a lease.

LESSOR The landlord under a lease.

LIBEL Injury to a person's character or reputation by print, writing, pictures, or signs.

LIBER Latin for "book." Sometimes used to refer to the large, bound book(s) of records in a court clerk's office, register of deeds, etc.

LIEN A claim against property to secure a debt or other obligation.

LINEUP A police procedure by which the suspect in a crime is exhibited, usually as one of a group of similar-appearing persons, before the victim or witness to determine if he or she can be identified as the person who committed the offense.

LITIGANT Party to a legal action.

LITIGATION The process of resolving a dispute over legal rights in court.

MAGISTRATE Used generally, this title means a judge. In Michigan, a district court magistrate is a quasi-judicial official of the district court given the power to set bail, accept bond, accept guilty pleas and sentence for traffic and other related violations, and to conduct informal hearings on civil infractions.

MAINTENANCE Providing for the support of a ward or the minor children or surviving spouse of a decedent.

- **MALICE** Evil intent, motive or purpose.
- **MANDAMUS** Latin; "We command." A Writ of Mandamus is a written order requiring the person to whom it is addressed to do some specified act, generally connected with his or her duty as a public official.
- MCLA An abbreviation for "Michigan Compiled Laws Annotated," a series of law books.
- **MEDIATION** A process that parties can use to reach their own agreements without going to court. A mediation decision is not ordinarily binding on the parties.
- **MERC** Michigan Employment Relations Commission. This organization handles the certification of collective bargaining units and the mediation of disputes arising out of collective bargaining.

MENTAL ILLNESS

- 1. "Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- 2. Means mental disease to such an extent that a person so afflicted requires care and treatment for his or her own welfare, or for the welfare of others or of the community.
- **MENTALLY RETARDED** Significantly below average intellectual abilities which originate during physical development (especially during pregnancy and early infancy).
- **MINOR** A person under the age of 18 years by civil law; a person under the age of 17 years by criminal and juvenile law.
- **MINOR OFFENSE** Minor Offense means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$500.00.
- **MIRANDA** Refers to a United States Supreme Court decision, *Miranda v. Arizona*, 348 US 436 (1966), from which the rules governing "the right to remain silent" were taken.
- **MIRANDA WARNING** A warning given by police prior to custodial interrogation, advising or informing the individual of his or her rights. For example, the accused has the right to remain silent, the right to an attorney, etc.
- **MISDEMEANOR** A violation of a penal law of this State which is not a felony, or a violation of an order, rule or regulation of a state agency that is punishable by imprisonment or by a fine that is not a civil fine.
- **MISFEASANCE** The improper performance of some act or duty.
- **MISTRIAL** A trial declared defective and void due to prejudicial error in the proceedings, or the failure of a jury to agree upon a verdict.

MITTIMUS Latin for "we send":

- 1. A written court order directed to the keeper of a prison, directing that he or she receive and safely keep an offender awaiting trial or sentence.
- 2. A writ directing the transfer of records from one court to another. (Contrast with Commitment.)

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MOOT Usually in reference to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing which would be affected by the court's decision. Moot court is a practice court for law students.

MORTGAGE A lien on real property to secure the performance of some obligation, and to be discharged upon payment or performance as stipulated. It is a pledge or security of particular property for the payment of a debt.

MORTGAGEE One who holds a mortgage; the creditor.

MORTGAGOR The maker of a mortgage; the debtor.

MOTION An application to the court for the purpose of obtaining a certain order or decision in favor of the applicant.

MOTIONS, CALENDAR Motions pertaining to the calendaring of court appearances in a case such as motions to continue, advance or reset.

MOTIONS IN LIMINE A motion to exclude certain testimonial evidence from admission into evidence at trial.

MOTIONS TO SUPPRESS Application to the court before a trial, asking that a certain physical evidence or matter relating thereto, not be brought out during the trial.

MOTION TO QUASH See "Quash."

MPSC An abbreviation for the Michigan Public Service Commission, an agency of the Department of Commerce.

MSA An abbreviation for "Michigan Statutes Annotated," a series of law books.

MSP An abbreviation for Department of Michigan State Police.

MUNICIPAL COURT Court whose authority is confined to the city or community in which it is established. Municipal Court civil jurisdiction is limited to \$1,500. A few cities chose to retain this court rather than change to the District Court System.

NE EXEAT A court order forbidding the person to whom it is addressed to leave the country, the state or the jurisdiction of the court.

NEGLECT HEARING Hearing held in Probate Court. Involves child abuse or those situations where the children are not being properly cared for.

NO FAULT A case which is decided without making a determination as to which party is at fault. Michigan has laws which provide for both no-fault auto insurance and no-fault divorce.

NOLLE PROSEQUI (OR) NOL. PROS. Unwilling to prosecute; a formal entry made on the court record, by which the prosecutor declares he or she will not further prosecute the case.

NOLO CONTENDERE Latin, meaning "I will not contest it." It is a plea treated as a guilty plea except that it is not an admission of guilt, but an indication of readiness to accept conviction and sentence rather than to go to trial. If the defendant were to plead guilty, at the time of the plea he or she tells the court exactly what he or she did; it has to fit the charge. By pleading nolo contendere, there is no such requirement. If a civil action is pending, or may later be filed against him or her, he or she can thus avoid incriminating testimony.

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NONFEASANCE The failure to perform some act or duty which ought to be performed. A neglected duty.

- **NON OBSTANTE VEREDICTO** Latin. Notwithstanding the verdict, i.e., an order of the judge entering a judgment for the defendant notwithstanding a jury verdict for the plaintiff.
- **NO PROGRESS** In a civil case, where a case is filed but not followed up; a case or cases which may be dismissed (disposed of) by the court because parties have done nothing to process the case from stage to stage.
- **NON-SERVICE** In either a civil or criminal case, where a summons or warrant is issued but not served, or no arrest made.
- **NOTICE OF HEARING** Document notifying of schedule matter in court. By law, one must notify the opposing party involved at least four days prior to hearing.

NOTICE TO QUIT

- 1. A written notice by a landlord to his tenant demanding that the tenant surrender and vacate the property, terminating the tenancy.
- 2. A notice to pay back rent in seven days or vacate.
- **NOTIFICATION OF PARENTS, RECORD OF NOTICE** Whenever a child is taken into custody by any peace officer, that officer is required to notify the parents of the child. A written record of the names of the persons notified, the manner and times of notification, or reasons for failure to notify must be made and preserved.
- **NUNC PRO TUNC** Latin phrase meaning "now for then." An order allowing acts done after they should have been done (now) to be effective retroactively to when they should have been done (then).
- NUNC PRO TUNC AMENDMENT An amendment or correction given retroactive effect by court order.
- **NUNC PRO TUNC FILING** The filing of a pleading to take effect as of an earlier time.
- **NUNC PRO TUNC JUDGMENT** A method of amending the record of a judgment which is in accord with what was actually pronounced and done, so that the record will be accurate and true. It is a procedural device often employed in correcting defects in titles in real estate.
- **OCJP** Office of Criminal Justice Programs. A state agency responsible for disbursing funds to various segments of the criminal justice system.
- **OBITER DICTUM** An incidental comment, not necessary to the formulation of the decision, made by the judge in an opinion which is not binding as precedent.
- **OFFENSE** A crime or ordinance violation. The word "offense" generally implies an act infringing public as distinguished from private rights. In respect to minors, an offense is any act which violates provisions of the Juvenile Code and thus places the person committing the act in the jurisdiction of the juvenile court. Does not include civil infractions.
- **OFFENSE AGAINST CHILD** Any act or acts by a person other than the child asserted as grounds for bringing such child within the provisions of the Juvenile Code.

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OFFENSE BY CHILD Any act or acts by a child asserted as grounds for bringing the child within the provisions of the Juvenile Code.

- ONE COURT OF JUSTICE A concept embodied in the Michigan Constitution of 1963, Article VI, Section 1, that there is but a single court in the state which is made up of several divisions, including a supreme court, a court of appeals, a circuit court, a district court, a probate court and other courts created by the Legislature.
- **ONE DAY, ONE TRIAL** A method of summoning and utilizing jurors whereby an individual serves as juror for either one day or for the length of one trial. The purpose of this method is to reduce the term of service and expand the number of individual jurors called.
- **ORDER** A direction of a court made or entered in writing. One which terminates the action itself, or decides some matter litigated by the parties.
- **ORDER ASSIGNING RESIDUE** A probate court order which names the persons entitled to receive parts of an estate and that share allotted to each.
- **ORDINANCE** A local law or regulation enacted by a municipal government. It has no effect outside that city or village.
- **PANEL** The jurors serving a specific court; also used to refer to panels of three judges that sit together to hear cases on the Court of Appeals. Also see "Jury Panel."
- **PARENS PATRIAE DOCTRINE** The inherent power and authority of state to protect the person and property of a person who is legally unable to manage his/her own affairs.
- **PAROLE** Conditional release from prison before the end of sentence; if the parolee observes the conditions, he or she need not serve the rest of his or her term.
- **PARTIAL GUARDIAN** A guardian whose rights, powers and duties are limited to those specifically enumerated by court order.

PATERNITY Fatherhood.

- **PATERNITY SUIT** A type of court suit in which a mother tries to prove that a certain man is the father of her illegitimate child.
- **PEACE OFFICER** Any public officer or official having authority to arrest to enforce the law and preserve the peace, and generally includes any sheriff or deputy sheriff, any state or municipal police officer, and any state conservation officer. It may also include judges of courts of criminal jurisdiction. Some other public officials (i.e., Mayor) may be designated by law as a peace officer for specific limited purposes.
- **PER CAPITA** A method by which an estate is divided equally among a given number of persons.
- **PEREMPTORY CHALLENGE** The right of the prosecution or defendant to challenge (remove) a certain number of jurors without giving any cause or reason. The right of the parties at a hearing to challenge a certain number of jurors without giving cause.
- **PERJURY** A deliberate lie said under oath.

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PERMANENT INJUNCTION One intended to remain in force unless modified by a later decree of a court.

PERMANENT WARD The permanent termination of parental rights from a child under the jurisdiction of the juvenile court; thus making the child a permanent ward of the court or other guardian.

PERSONAL PROPERTY Includes everything that is the subject of ownership but which is not real estate.

PERSONAL RECOGNIZANCE The release that is gained in a criminal case without the necessity of having to post money or have any surety sign a bond with the court. The court takes the defendant's word that he or she will appear for a scheduled matter or when advised to appear.

PERSONAL REPRESENTATIVE The current probate term for an executor, administrator with will annexed, or administrator de bonis non.

PER STIRPES By right of representation; it is the method of dividing an estate where a group of distributees take the share to which their deceased ancestor would have been entitled, such as where children take the share to which their parents would have been entitled.

PETIT JURY See "Jury Petit."

PETITION

- 1. An application made in writing to the court.
- 2. In probate court it is the instrument used to set forth the allegations (complaint) against the party before the juvenile court. Jurisdiction of the juvenile court can only be invoked by petition.

PLAINTIFF In civil cases, the person who initiates the lawsuit is the plaintiff. In criminal matters, the prosecuting attorney is the plaintiff.

PLEA The defendant's response to a criminal charge (guilty, not guilty, or nolo contendere).

PLEA-BARGAINING An arrangement between the prosecutor and defense counsel whereby the defendant agrees to plead guilty to a particular offense in return for the prosecuting attorney's agreement to allow such a plea (usually to a reduced charge) and/or a promise to dismiss some other offense pending against the defendant.

PLEAD To answer the indictment, information, complaint and warrant, citation, appearance ticket, etc.; to answer to an allegation.

PLEADING The process by which opposing parties alternately present their contentions in writing, each responding to the immediately preceding pleading of the other party, thereby narrowing the controversy until, hopefully, a single point of dispute emerges, called the issue. It is the issues which are resolved at trial.

PLEADINGS The papers filed by parties in a lawsuit stating their claims and defenses against each other.

PLENARY GUARDIAN A guardian who possesses the full powers of a full guardian of the person, and of the estate.

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POWER OF ATTORNEY A written instrument appointing and authorizing a person to act in the place of another as agent or substitute. One holding a power of attorney is called an attorney in fact, and may or may not be a lawyer.

- **PRAECIPE** A form formerly used to ask a court clerk to do something (such as issue a summons after a complaint is filed, etc.).
- **PREJUDICIAL ERROR** "Reversible error;" an error in the course of a trial serious enough to require an appellate court to reverse the judgment.
- **PRELIMINARY EXAMINATION** A hearing in a felony case before a district judge at which the prosecution presents evidence (the defendant and his or her counsel being present) from which the district judge decides whether or not there is probable cause to believe that a crime has been committed and that the defendant committed the crime and to "bind over" or refer the defendant to the circuit court for trial. Testimony of some witnesses and presentation of some exhibits are had at such examination.
- **PRELIMINARY HEARING** The first stage of the processing of a juvenile case when the juvenile is in custody.
- **PRELIMINARY INQUIRY** The first stage in the processing of a juvenile case when the juvenile is not in custody. An informal juvenile court procedure.
- **PRESENTENCE INVESTIGATION** Investigation of the relevant background of a convicted offender. Usually conducted by a probation officer attached to a court, designed to act as a sentencing guide for the sentencing judge. See "Presentence Report."
- **PRESENTENCE REPORT** Written report prepared by the Probation Department containing the family and personal history of the accused, evaluation of the crime and its ramifications, and recommendations as to sentencing. Required in all felony cases. Presented to the judge as a guide in determining sentence.
- **PRESENTMENT** A written finding by a grand jury of an offense, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government.

PRESIDING JUDGE

- 1. The judge conducting a hearing or trial. The judge in charge of a case.
- 2. Formerly, the chief judge of a court composed of two or more judges. The presiding judge in this sense is now called the Chief Judge.
- **PRETRIAL CONFERENCE** Hearing in a criminal or civil case between the judge and the attorneys to discuss any questions or matters that can be resolved prior to the trial itself to assist in expediting or simplifying the trial. Such hearing is usually informal and without clients participating in the hearing itself.
- **PRETRIAL HEARING** The same as a pretrial conference.
- **PRIMA FACIE** "At first glance." Case in which the evidence produced is sufficient to establish the facts unless contrary evidence is produced.
- **PROBABLE CAUSE** A reasonable ground for believing the facts justify issuance of a warrant, or further legal action.

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- **PROBATE** The process of proving the validity of a will.
- **PROBATE COURT** The court in Michigan which handles matters of probate; that is, wills, estates, trusts, guardianships, conservatorships, etc. The court also handles matters relating to the commitment of mentally ill persons.
- **PROBATE REGISTER** A person who serves both as clerk of probate court and in a quasi-judicial manner in estates.
- **PROBATION** Allowing a person convicted of an offense to remain in the community instead of going to jail or prison as long as the offender fulfills the conditions of the probation. One's probation is usually supervised by a probation officer. If a person violates probation, probation can be revoked and the defendant resentenced.
- **PROCEEDING** Any hearing or court appearance related to the adjudication of a case.
- **PROCESS** A court order to appear in court or enforce a judgment. Subpoenas and summonses are examples of process.
- **PROCESS SERVER** A person employed to deliver a summons or complaint to a person being sued or to deliver a subpoena to a witness.
- **PRO CON DIVORCE** An uncontested divorce. The proceeding consists of a short hearing at which only plaintiff appears, the defendant not contesting anything, after which the divorce is granted.
- **PRO SE** A person who represents himself or herself in court without the aid of a lawyer. Also referred to as pro per.
- **PROSECUTING ATTORNEY** A public officer whose duty is the prosecution of criminal proceedings on behalf of the people.
- **PROSECUTOR** A prosecuting attorney.
- **PS** An abbreviation for the Protective Services unit of the Department of Social Services.
- **PUBLIC DEFENDER** A lawyer paid by the county to defend one who is indigent (without funds). Michigan has a statewide "Public Defender" office for the handling of appeals (See SADO). It does not have a statewide system for handling of trials.
- **PURCHASE-MONEY MORTGAGE** A mortgage given, concurrently with a conveyance of land, on the same land, by the vendee to the vendor, to secure the unpaid balance of the purchase price.
- **QUANTUM MERUIT** "As much as he deserves"; absent a contract/agreement, the law implies a promise to pay a reasonable amount for services or materials received from another.
- **QUASH** To nullify a conviction or order. A motion to quash is initiated for the purpose of setting aside a bindover after a preliminary examination.
- **QUID PRO QUO** Something for something; a fair return; the giving of one valuable thing for another.
- **QUO WARRANTO** The name of a writ which brings a person into court so that it may be determined by what right he or she exercises his or her authority, usually brought by the Attorney General to test a person's claim of right to hold public office.

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- **REAL PROPERTY** Land, and generally whatever is erected or growing upon or affixed to the land.
- **REALTY** A brief term for real property; also for anything which partakes of the nature of real property.
- **RECONCILIATION** When the parties in a divorce action are attempting to work out their differences and wish to have enforcement of their court-orders suspended.
- **RECESS** A brief time set by the judge when those in court including the jury may be excused from the courtroom.

RECOGNIZANCE

- 1. An obligation entered into before a court of record or duly authorized magistrate, containing a condition to do some particular act, usually to appear and answer a criminal accusation.
- 2. A term used interchangeably with "bail bond" in many statutes and court opinions.
- **RECORD** The word for word (verbatim) account by the official court reporter/recorder of all proceedings at the trial. See Docket.
- **RECORD ON APPEAL** The pleadings, exhibits, orders or decrees filed in a case in the trial court, a copy of the docket entries, and a transcript of the testimony taken in the case, forwarded to the appellate court.
- **RECORDER** In some jurisdictions, a public officer who has charge of the records of deeds, and instruments relating to real property, and other legal instruments required by law to be recorded. Also, a court recorder (see "Court Recorder").
- **RECORDS RETENTION AND DISPOSAL SCHEDULES** A system or plan covering all records kept by a court which states what must be kept indefinitely and what may be disposed of and when.
- **REFEREE** A person who takes testimony and reports to the court. A referee can be either a Friend of the Court or an attorney employed by the Friend of the Court or an employee of the Juvenile Court.
- **REFERRAL** Referral to a Protective Service. If it appears that the best interest of the child and of society will be served, the court may refer the matter at hand to a public or private agency providing such service.
- **REGISTER OF ACTIONS** A written list of all important acts done in court in the conduct of an individual case from beginning to end. This is properly called a "case history." The case register of actions (for acts done), the case file (for documents filed) and any transcript of proceedings together form the "record" or a court of record.
- **RELEASE-ON-RECOGNIZANCE (ROR)** The pretrial release of an arrested person on his or her written promise to appear for trial at a later date, without deposit of cash or any surety. Used primarily with defendants as an alternative to monetary bail. See "ROR," "Recognizance."
- **REMAND** To send a case back to the court from which it came for further proceedings. (e.g., defendant waives a preliminary examination, thus the case goes from District Court to Circuit Court, usually because the defendant intends to plead guilty to a charge. The defendant then decides not to plead guilty and requests a preliminary examination; if the request is granted, the case is "remanded" to District Court.) To send back to the lower or trial court from which it was appealed, with instructions as to what further proceedings should be had there.
- **REMITTITUR** An order in cases when a jury has made an award of damages which is excessive in which the amount of damages is reduced.

(9/99) Reference Materials / 6-03-31

REPLEVIN An action to recover property wrongfully taken or held by another. Now called Claim and Delivery.

REPORTS

- 1. Court reports: published judicial cases arranged according to some grouping, such as court jurisdiction, period of time, subject matter or case significance.
- 2. Administrative reports or decisions: published decisions of an administrative agency. Example: 406 Mich 1 means a case started on page 1 of volume 406 of Michigan Reports (Michigan Supreme Court decisions).

REPORTER

- 1. A court official responsible for the verbatim recording of the proceedings in trials, including the questions addressed to, and answers made by, witnesses, usually for the purpose of preparing a verbatim transcript.
- A court official responsible for compiling, indexing and publishing the opinions of an appellate court.

RES GESTAE

- 1. A matter incidental to the main or principal fact which helps explain that fact.
- 2. Acts and words which are so related to an occurrence as to appear to be evoked and prompted by it.
- **RES GESTAE WITNESS** Person taking part and/or witnessing or at the scene of a crime who may have personal knowledge concerning the crime or the defendant's possible involvement.
- **RES JUDICATA** A rule that a matter once judicially decided is finally and conclusively decided and cannot be relitigated.
- **RESIDENCE** The place where one presently in fact lives. Does not require that it be a permanent home as is the case with "domicile."
- **RESIDUE** That part of an estate remaining after payment of all debts, charges and legacies.
- **RESPONDENT** A party against whom a motion is filed in the course of a lawsuit; analogous to a defendant or an appellee.
- **RESTRAINING ORDER** An order of the court which is intended to restrain a person's actions and preserve the status quo until a hearing can be held to determine if a temporary injunction should be issued. TRO or temporary restraining order. Not to be confused with personal protection orders.
- **RESTRICTED DELIVERY MAIL** A new postal classification which takes place of certified mail. County Clerks frequently use this type of mail in conducting the court's business.
- **RETURN** An endorsement or report by an officer, recording the manner in which he or she served, the process or order of the court.
- **REVERSE** To set aside a judgment on appeal or proceedings in error; to annul; to vacate.
- **REVOCATION OF WILL** The annulling, or rendering inoperative an existing will, by some subsequent act of the testator.
- **RIGHT OF REPRESENTATION** See "Per Stirpes."

6-03-32 / Reference Materials (9/99)

- R-O-R, ROR See "Release on Recognizance."
- **14 DAY RULE** A rule which requires that a person charged with a felony be given a preliminary examination not more than 14 days after the person's arraignment on the original warrant.

180 DAY RULE

- A rule which allows those accused of a felony who have been in jail for 182 days and who have not yet been brought to trial, to be released on their own recognizance if the delay has not been caused by the accused or the accused's attorney.
- 2. A rule which requires all pending charges against a prison inmate be brought to trial in 182 days or be dismissed with prejudice.
- **R.U.R.E.S.A.** An abbreviation for "Revised Uniform Reciprocal Enforcement of Support Act." Pertains to non-support actions against a noncustodial parent who resides in another state.
- **SADO** An abbreviation for State Appellate Defenders Office.
- **SATISFACTION** A written acknowledgement of receipt of payment or performance of a judgment which, when filed with the court, discharges the obligation.
- **SCAO** An abbreviation for the State Court Administrative Office.
- **SEARCH WARRANT** A written order from a judge or magistrate directing an officer to search a specific place for a specific object, issued upon a showing of probable cause.
- **SENTENCE** The punishment imposed upon the defendant following a conviction in a criminal proceeding.
- **SEQUESTRATION OF WITNESSES** A court order directing witnesses to stay outside the courtroom and not discuss testimony with other witnesses until they are called to testify to prevent witnesses from being influenced by the testimony of other witnesses.
- **SERVICE OF PROCESS** The service of writs, summonses, etc.; signifies the delivering or leaving of such documents with the party to whom or with whom they ought to be delivered or left; and, when they are so delivered, they are then said to have been served.
- **SHOW CAUSE ORDER** An order to appear as directed and present to the court reasons and considerations as to why certain circumstances should be continued, permitted, or prohibited, as the case may be.

SHOW UP See "Lineup."

- **SLANDER** Injury to a person's character or reputation by the spoken word.
- **SMALL CLAIMS COURT** A division of district court. The jurisdiction of the small claims division is limited to cases where the amount claimed does not exceed \$2,500. Claims are handled informally by a judge without lawyers or juries and with no right to appeal.
- **SOLE CUSTODY** An order of the court which states that the children live with one parent and that parent is responsible for making decisions on important issues dealing with the children.
- **SOS** An abbreviation for the Michigan Department (of the Secretary) of State.

(7/97) Reference Materials / 6-03-33

SPECIFIC PERFORMANCE A court order directing a party to a contract who has breached its terms to do what he or she contracted to do; generally involved when the thing or service contracted for is unique so that money damages for breach of contract would be inadequate, i.e., breach of contract to sell water rights to one who has no alternative access to water.

- **SPENDTHRIFT** A person who by excessive drinking, gaming, idleness, or debauchery of any kind shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, or expose the State to charge or expense for the support of himself or family.
- **STANDARD JURY INSTRUCTIONS** A collection of jury instructions approved by a Supreme Court committee for use by trial court judges.
- **STARE DECISIS** The doctrine that the decisions of the court should serve as precedents for future cases.
- STATE APPELLATE DEFENDER'S OFFICE (SADO) A state office for handling criminal appeals and post conviction proceedings for indigents on a state-wide basis. The goal is to provide speedy processing of appeals within the time limits set by court rules. The office is supervised by the seven member State Appellate Public Defender Commission which is appointed by the governor upon recommendations of the State Judiciary and the State Bar of Michigan.
- **STATE CASE** Refers to a violation of state law. The term is most often used in District Courts and the remaining Municipal Courts to distinguish between the local ordinance violations they usually deal with and violations of state statutes. Violating a state law makes the case a "state case" in these jurisdictions.
- **STATE COURT ADMINISTRATOR** An official appointed by the Michigan Supreme Court to act as the director of the State Court Administrative Office.
- **STATUS OFFENSE** A violation of the juvenile code by a minor that would not be considered a violation of the law if committed by an adult. Examples: runaway, school truancy, incorrigibility, etc.
- **STATUTES** Laws in the State of Michigan enacted by the State Legislature.
- **STATUTE OF FRAUDS** A legal doctrine or rule that certain types of agreements must be in writing or they will not be enforced by the courts. Real estate sales agreements are examples of agreements that must be in writing.

STATUTE OF LIMITATION

- 1. CIVIL A statutory time limit on the right to seek relief in court for damages; providing that any claim for relief shall be barred unless begun within a specific period of time following the alleged wrong.
- 2. CRIMINAL The mandatory time limit set by statute to commence prosecution. The following are examples of specific limitations in Michigan:

Murder no limit Assault with intent to murder 10 years Conspiracy to commit murder 10 years Kidnapping 10 years Extortion 10 years Other felonies generally 6 years 6-03-34 / Reference Materials (7/97)

- **STAY** The suspension of a judicial proceeding by court order.
- **STIPULATION** An agreement between opposing attorneys on any matter relating to the proceedings or trial, i.e., to extend the time to answer, to adjourn the trial date, to admit certain facts at the trial, etc. Often requires court approval to be effective.
- **SUBPOENA** A writ or order to compel attendance in a court with a penalty for failure to do so.
- **SUBPOENA DUCES TECUM** This subpoena is used when you want the witness to bring with him or her all of his or her records or other specified material mentioned in the body of the subpoena.
- **SUBROGATION** The substitution of one party to the rights of another. Most commonly used in civil cases in which an insurance company (subrogee) which pays its policyholder is entitled to the policyholder's right to recover damages.
- **SUCCESSOR** A person who succeeds to the office, rights, responsibilities, or place of another. One who replaces or follows another.
- **SUMMARY PROCEEDINGS** In Michigan, a civil action to recover possession of premises (eviction) and to obtain certain types of ancillary relief (damages, back rent, etc.).
- **SUMMARY DISPOSITION** A judgment which is rendered on the motion of one of the parties, when the pleadings, depositions, affidavits, etc., show that there is no real issue to be decided or that no valid claim or no valid defense has been offered.
- **SUMMONS** A notice given to a party stating that proceedings have been instituted against him or her and directing that the person appear in court at a given date and time to answer the complaint; and further, should he or she fail to answer a judgment will be entered against him or her.
- **SUPERINTENDING CONTROL** The constitutional doctrine that the Michigan Supreme Court has general administrative supervision over all the courts of the state. The Circuit Courts of each county have a similar administrative supervisory power over the various lower courts within their jurisdiction.
- **SUPPORT ORDER** An order by the Circuit Court ordering the payment of money for a child or spouse in a divorce proceeding or a Paternity Act Proceeding. Support includes medical, dental and educational expenses.
- **SUPPRESS** To suppress a court record is to prevent its release; to suppress evidence is to not allow its use.
- **SUPREME COURT** The court of last resort in Michigan, the highest appeals court in the State. The Michigan Supreme Court also has superintending control over all other courts in the state. See "Superintending Control."
- **SURETY** A person who legally accepts the responsibility for the fulfillment of another's obligation, in case the latter, who is called the principal, fails to fulfill it. The obligations are usually financial.
- **TAKE** As used in probate, to acquire title or to be entitled to an estate, such as the person is entitled to "take" under the will.
- **TEMPORARY WARD** A minor who is under the supervision of the juvenile court but whose parents' parental rights have not been terminated.

(9/99) Reference Materials / 6-03-35

TENANT A person who rents property from the owner (called a landlord). One who occupies the property of another for a temporary period, with the landlord's consent.

TEN PERCENT BOND A procedure that allows persons to pay to the court ten percent (10%) of the bond otherwise required of them to obtain their release. This procedure reduces the actual monetary amount paid so that most persons can arrange bond without the services of a bondsman or other surety.

TERMINATION HEARING A hearing held in the family division of Circuit Court to determine if the parental rights are to be taken away from the parties involved, and therefore the child will become a ward of the court. The prosecutor is required to attend. This is the final scheduled hearing of a neglect/abuse case

TESTATE Dying having made a valid will.

TESTATOR, TEXTATRIX One who has made a will.

TESTIMONY The statement of a witness under oath which is given as evidence.

TORT An injury or wrong committed against the person or property of another, arising out of violation of a duty established by law rather than by contract.

TRANSCRIPT The verbatim record of proceedings in a trial or hearing.

TRIAL COURT The court where trial took place. In Michigan, there are three trial courts: district, circuit and probate court.

TRUST A right of property, real or personal, held by one party for the benefit of another.

TRUSTEE A person in whom property is vested in trust for others.

TURNER HEARING A proceeding to determine if the defendant was entrapped by law enforcement officials into committing the offense.

VENDEE A buyer; a person to whom something is sold.

VENDOR A seller; a person who sells something.

VENIRE Technically, a writ summoning prospective jurors; popularly refers to the group of jurors summoned.

VENIREMAN A member of a jury panel.

VENUE The county in which proceedings may be instituted. See also "Change of Venue."

VERBATIM The recording of the exact word-for-word proceedings of a trial court, as prepared in transcript format.

VERDICT The jury's decision or finding on the issues submitted to it for determination.

VERIFICATION The affidavit of a party, (e.g., in a court pleading) or of his or her agent or attorney, that certain statements of fact, (e.g., the allegations of a pleading) are true.

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VISITATION ORDER Now referred to as "parenting time" order. An order that establishes visiting times between non-custodial parent and his/her children.

- **VOIR DIRE EXAM** The preliminary examination into the qualifications and potential biases of prospective witnesses or jurors.
- **WADE HEARING** A pretrial hearing to test the fairness of a lineup. The issue at such a hearing is whether to admit or suppress the identification of the accused that resulted from the lineup.
- **WAIVE** To give up a right, claim, or privilege.
- **WAIVER** The act of waiving or giving up a right, privilege, etc.
- **WAIVER HEARING** When a petition is filed in juvenile court requesting a waiver of jurisdiction, a two phase hearing is given on the merits of the petition. See "Jurisdiction, Waiver of."
- **WAIVER OF IMMUNITY** A means authorized by statute by which a witness, before testifying or producing evidence, may relinquish the right to refuse to testify against himself or herself, thereby making it possible for his or her testimony to be used against him or her in future proceedings.
- WAIVER OF JURISDICTION See "Jurisdiction. Waiver of."
- **WALKER HEARING** A court proceeding to determine whether the police officer advised the defendant of his or her rights under Miranda prior to the statement and whether the defendant voluntarily gave the statement.
- **WARD** A person (especially an infant) placed by authority of law under the care of a guardian.
- **WARRANT** A writ or paper issued by a judge or magistrate which allows the police to arrest a person. See also "Bench warrant," "Fugitive warrant," "Search warrant," "Warrant of arrest."
- **WARRANT OF ARREST** An order issued by a judge or magistrate, to a peace officer requiring the arrest of a person named therein.
- **WARRANT RECALL** A procedure for removing from Department of State and State Police computers information concerning cancelled warrants in order to avoid repeated or mistaken arrests.
- **WIDOW** A woman whose husband is dead, and who has not remarried.
- **WIDOWS ELECTION** A widow's choice whether she will inherit under the will or under statute; that is whether she will accept the provision made for her in the will, and acquiesce in her husband's disposition of his property, or disregard it and claim what the law allows her.
- **WILL** A written instrument whereby a person makes a disposition of his or her property to take effect after his or her death.
- **WITH PREJUDICE** A claim dismissed "with prejudice" means that the plaintiff in a civil case or the prosecution in a criminal case is forever barred from bringing a lawsuit on the same claim.
- **WITHOUT PREJUDICE** A claim dismissed "without prejudice" may be the subject of a new lawsuit or a new criminal proceeding.

(7/97) Reference Materials / 6-03-37

WITNESS One who testifies to what he or she has seen, heard or otherwise observed.

WRIT A court order giving the authority to require the performance of a specific act.

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Section 7 Selected Michigan Court Rules

Selected Michigan Court Rules

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Selected Michigan Court Rules

The following Michigan Court Rules are the most relevant to the court reporter/recorder, however, it is recommended that the court reporter/recorder have access to all the rules.

7-01 CHAPTER 2. CIVIL PROCEDURE

A. Subchapter 2.300 Discovery

Rule 2.302 General Rules Governing Discovery

- (B) Scope of Discovery.
 - (3) Trial Preparation; Materials.
 - (b) Without the showing required by subrule (B)(3)(a), a party or a nonparty may obtain a statement concerning the action or its subject matter previously made by the person making the request. A nonparty whose request is refused may move for a court order. The provisions of MCR 2.313 (A)(5) apply to the award of expenses incurred in relation to the motion.
 - (c) For purposes of subrule (B)(3)(b), a statement previously made is
 - (i) a written statement signed or otherwise adopted or approved by the person making it; or
 - (ii) a stenographic, mechanical, electrical, or other recording, or a transcription of it, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(H) Filing and Service of Discovery Materials.

- (1) Unless a particular rule requires filing of discovery materials, requests, responses, depositions, and other discovery materials may not be filed with the court except as follows:
 - (a) If discovery materials are to be used in connection with a motion, they must either be filed separately or be attached to the motion or an accompanying affidavit;
 - (b) If discovery materials are to be used at trial they must be either filed or made an exhibit:
 - (c) The court may order discovery materials to be filed.

7-01-01 (7/96)

- (2) Copies of discovery materials served under these rules must be served on all parties to the action, unless the court has entered an order under MCR 2.107(F).
- (3) On appeal, only discovery materials that were filed or made exhibits are part of the record on appeal.
- (4) Removal and destruction of discovery materials are governed by MCR 2.316.

NOTE

Subrule (H) is a new provision governing the filing of discovery materials, which differs from both prior Michigan practice and the federal rules. Unless a particular rule requires a filing (see e.g., MCR 2.312[F]), filing is required only when the materials are to be used in connection with a motion or at trial. Only those discovery materials that were filed or made an exhibit are considered part of the record on appeal. In a number of places throughout the other discovery rules, references to filing of various papers are deleted to be consistent with subrule (H).

Rule 2.304 Persons Before Whom Depositions May be Taken

- (A) Within the United States. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken
 - (1) before a person authorized to administer oaths by the laws of Michigan, the United States, or the place where the examination is held;
 - (2) before a person appointed by the court in which the action is pending; or
 - (3) before a person on whom the parties agree by stipulation under MCR 2.302(F)(1).

A person acting under subrule (A)(2) or (3) has the power to administer oaths, take testimony, and do all other acts necessary to take a deposition.

- **(B)** In Foreign Countries. In a foreign country, depositions may be taken
 - (1) on notice before a person authorized to administer oaths in the place in which the examination is held, by either the law of that place or of the United States; or
 - (2) before a person commissioned by the court, and a person so commissioned has the power by virtue of the commission to administer a necessary oath and take testimony; or
 - (3) pursuant to a letter rogatory.

A commission or a letter rogatory may be issued on motion and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in another manner is impracticable or inconvenient; both a commission and a letter rogatory may be issued in a proper case. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [name of country]." Evidence obtained in response to a letter rogatory need not be excluded merely because it is not a verbatim transcript or the testimony was not taken under oath, or because of a similar departure from the requirements for depositions taken within the United States under these rules.

- **(C) Disqualification for Interest.** Unless the parties agree otherwise by stipulation in writing or on the record, a deposition may not be taken before a person who is
 - (1) a relative or employee of or an attorney for a party,
 - (2) a relative or employee of an attorney for a party, or
 - (3) financially interested in the action.

Rule 2.306 Depositions on Oral Examination

(C) Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections.

- (1) The person before whom the deposition is to be taken must put the witness on oath. Examination and cross-examination of the witness shall proceed as permitted at a trial under the Michigan Rules of Evidence. In lieu of participating in the oral examination, a party may send written questions to the person conducting the examination, who shall propound them to the witness and record the witness's answers.
- (2) The person before whom the deposition is taken shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness.
 - (a) The testimony must be taken stenographically or recorded by other means in accordance with this subrule. The testimony need not be transcribed unless requested by one of the parties.
 - (b) While the testimony is being taken, a party, as a matter of right, may also make a record of it by nonsecret mechanical or electronic means, except that video recording is governed by MCR 2.315. Any use of the recording in court is within the discretion of the court. A person making such a record must furnish a duplicate of the record to another party at the request and expense of the other party.

- (3) The court may order, or the parties may stipulate, that the testimony at a deposition be recorded by other than stenographic means.
 - (a) The order or stipulation must designate the manner of recording and preserving the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A deposition in the form of a recording may be filed with the court as are other depositions.
 - (b) If a deposition is taken by other than stenographic means on order of the court, a party may nevertheless arrange to have a stenographic transcription made at that party's own expense.
 - (c) Before a deposition taken by other than stenographic means may be used in court it must be transcribed unless the court enters an order waiving transcription. The costs of transcription are borne by the parties as determined by the court.
- (4) All objections made at the deposition, including objections to
 - (a) the qualifications of the person taking the deposition,
 - (b) the manner of taking it,
 - (c) the evidence presented, or
 - (d) the conduct of a party,

must be noted on the record by the person before whom the deposition is taken. Subject to limitations imposed by an order under MCR 2.302(C) or subrule (D) of this rule, evidence objected to on grounds other than privilege shall be taken subject to the objections.

(D) Motion to Terminate or Limit Examination.

(1) At any time during the taking of the deposition, on motion of a party or of the deponent and on a showing that the examination is being conducted in bad faith or in a manner unreasonably to annoy, embarrass, or oppress the deponent or party, or that the matter inquired about is privileged, a court in which the action is pending or the court in the county or district where the deposition is being taken may order the person conducting the examination to cease taking the deposition as provided in MCR 2.302(C). If the order entered terminates the examination, it may resume only on order of the court in which the action is pending.

- (2) On demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to move for an order. MCR 2.313(A)(5) applies to the award of expenses incurred in relation to the motion.
- (3) If a party knows before the time scheduled for the taking of a deposition that he or she will assert that the matter to be inquired about is privileged, the party must move to prevent the taking of the deposition before its occurrence or be subject to costs under subrule (G).
- (4) A party who has a privilege regarding part or all of the testimony of a deponent must either assert the privilege at the deposition or lose the privilege as to that testimony for purposes of the action. A party who claims a privilege at a deposition may not at the trial offer the testimony of the deponent pertaining to the evidence objected to at the deposition. A party who asserts a privilege regarding medical information is subject to the provisions of MCR 2.314(B).
- **(E) Exhibits.** Documents and things produced for inspection during the examination of the witness must, on the request of a party, be marked for identification and annexed to the deposition, if practicable, and may be inspected and copied by a party, except as follows:
 - (1) The person producing the materials may substitute copies to be marked for identification, if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals.
 - (2) If the person producing the materials requests their return, the person conducting the examination or the stenographer must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to the deposition. A party may move for an order that the original be annexed to and filed with the deposition, pending final disposition of the action.

(F) Certification and Transcription; Filing; Copies.

- (1) If transcription is requested by a party, the person conducting the examination or the stenographer must certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. A deposition transcribed and certified in accordance with subrule (F) need not be submitted to the witness for examination and signature.
- (2) On payment of reasonable charges, the person conducting the examination shall furnish a copy of the deposition to a party or to the deponent. Where transcription is requested by a party other than the party requesting the deposition, the court may order, or the parties may stipulate, that the expense of transcription or a portion of it be paid by the party making the request.

- (3) Except as provided in subrule (C)(3) or in MCR 2.315(E), a deposition may not be filed with the court unless it has first been transcribed. If a party requests that the transcript be filed, the person conducting the examination or the stenographer shall, after transcription and certification:
 - (a) securely seal the transcript in an envelope endorsed with the title and file number of the action and marked "Deposition of [name of witness]", and promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk of that court for filing;
 - (b) give prompt notice of its filing to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.

(G) Failure To Attend or To Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed with the deposition and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred in attending, including reasonable attorney fees.

Rule 2.307 Depositions on Written Questions

(B) Taking of Responses and Preparation of Record. A copy of the notice, any stipulation, and copies of all questions served must be delivered by the party who proposed the deposition to the person before whom the deposition will be taken as stated in the notice. The person before whom the deposition is to be taken must proceed promptly to take the testimony of the witness in response to the questions, and, if requested, to transcribe, certify, and file the deposition in the manner provided by MCR 2.306 (C), (E), and (F), attaching the copy of the notice, the questions, and any stipulations of the parties.

Rule 2.308 Use of Depositions in Court Proceedings

(C) Effect of Errors or Irregularities in Depositions.

- (1) **Notice.** Errors or irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving notice.
- (2) **Disqualification of Person Before Whom Taken.** Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) **Taking of Deposition.**

- (b) Errors and irregularities occurring at the deposition in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any other kind which might be cured if promptly presented, are waived unless seasonable objection is made at the taking of the deposition.
- (4) **Certification, Transcription, and Filing of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom it was taken are waived unless a motion objecting to the deposition is filed within a reasonable time.
- (5) **Harmless Error.** None of the foregoing errors or irregularities, even when not waived, or any others, preclude or restrict the use of the deposition, except insofar as the court finds that the errors substantially destroy the value of the deposition as evidence or render its use unfair or prejudicial.

Rule 2.315 Video Depositions

- (A) When Permitted. Depositions authorized under MCR 2.303 and 2.306 may be taken by means of simultaneous audio and visual electronic recording without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this rule.
- **(B) Rules Governing.** Except as provided in this rule, the taking of video depositions is governed by the rules governing the taking of other depositions unless the nature of the video deposition makes compliance impossible or unnecessary.

(C) Procedure.

- (1) A notice of the taking of a video deposition and a subpoena for attendance at the deposition must state that the deposition is to be visually recorded.
- (2) A video deposition must be timed by means of a digital clock or clocks capable of displaying the hours, minutes, and seconds. The clock or clocks must be in the picture at all times during the taking of the deposition.
- (3) A video deposition must begin with a statement on camera of the date, time, and place at which the recording is being made, the title of the action, and the identification of the attorneys.
- (4) The person being deposed must be sworn as a witness on camera by an authorized person.

- (5) More than one camera may be used, in sequence or simultaneously.
- (6) The parties may make audio recordings while the video deposition is being taken.
- (7) At the conclusion of the deposition a statement must be made on camera that the deposition is completed.

(D) Custody of Tape and Copies.

- (1) The person making the video recording must retain possession of it. The video recording must be securely sealed and marked for identification purposes.
- (2) The parties may purchase audio or audio-visual copies of the recording from the operator.
- **(E) Filing; Notice of Filing.** If a party requests that the deposition be filed, the person who made the recording shall
 - (1) file the recording with the court under MCR 2.306 (F)(3), together with an affidavit identifying the recording, stating the total elapsed time, and attesting that no alterations, additions, or deletions other than those ordered by the court have been made;
 - (2) give the notice required by MCR 2.306 (F)(3), and
 - (3) serve copies of the recording on all parties who have requested them under MCR 2.315(D)(2).

(F) Use as Evidence; Objections.

- (1) A video deposition may not be used in a court proceeding unless it has been filed with the court.
- (2) Except as modified by this rule, the use of video depositions in court proceedings is governed by MCR 2.308.
- (3) A party who seeks to use a video deposition at trial must provide the court with either
 - (a) a transcript of the deposition, which shall be used for ruling on any objections, or
 - (b) a stipulation by all parties that there are no objections to the deposition and that the recording (or an agreed portion of it) may be played.

- (4) When a video deposition is used in a court proceeding, the court must indicate on the record what portions of the recording have been played. The court reporter or recorder need not make a record of the statements in the recording.
- (G) Custody of Video Deposition After Filing. After filing, a video deposition shall remain in the custody of the court unless the court orders the recording stored elsewhere for technical reasons or because of special storage problems. The order directing the storage must direct the custodian to keep the recordings sealed until the further order of the court. Video depositions filed with the court shall have the same status as other depositions and documents filed with the court, and may be reproduced, preserved, destroyed, or salvaged as directed by order of the court.
- **(H) Appeal.** On appeal the recording remains part of the record and shall be transmitted with it. A party may request that the appellate court view portions of the video deposition. If a transcript was not provided to the court under subrule (F)(3), the appellant must arrange and pay for the preparation of a transcript to be included in the record on appeal.
- (I) Costs. The costs of taking a video deposition and the cost for its use in evidence may be taxed as costs as provided by MCR 2.625 in the same manner as depositions recorded in other ways.

7-02 CHAPTER 4. DISTRICT COURT

A. Subchapter 4.200 Landlord-Tenant Proceedings; Land Contract Forfeiture

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(E) Recording. All landlord-tenant summary proceedings conducted in open court must be recorded by stenographic or mechanical means, and only a reporter or recorder certified under MCR 8.108 (G) may file a transcript of the record in a Michigan court.

7-03 CHAPTER 5. PROBATE COURT AND FAMILY DIVISION OF CIRCUIT COURT

A. Subchapter 5.600 Judgments and Orders

Rule 5.602 Form and Signing of Judgments and Orders

(A) Form of Judgments and Orders. A proposed judgment or order must include the name, address, and telephone number of the attorney or party who prepared it. All judgments and orders of the court must be typewritten or legibly printed in ink and signed by the judge to whom the proceeding is assigned.

B. Subchapter 5.800 Appeals

Rule 5.802 Appellate Procedure; Stays Pending Appeal

(A) Procedure. Except as modified by this subchapter, chapter 7 of these rules governs appeals from the probate court.

(B) Record.

- (1) An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court. The appeal is not de novo.
- (2) The probate register may transmit certified copies of the necessary documents and papers in the file if the original papers are needed for further proceedings in the probate court. The parties shall not be required to pay for the copies as costs or otherwise.

C. Subchapter 5.780 Miscellaneous Proceeding

Rule 5.783 Parental Rights Restoration Act Proceedings

(A) Applicable Rules. A proceeding by a minor to obtain a waiver of parental consent for an abortion shall be governed by the rules applicable to probate proceedings except as modified by this rule.

(B) Confidentiality, Use of Initials, Private File, Reopening.

(1) The court shall assure the confidentiality of the file, the assistance given the minor by court personnel, and the proceedings.

- (2) If requested by the minor, the title of the proceedings shall be by initials or some other means of assuring confidentiality. At the time the petition is filed, the minor shall file a Confidential Information Sheet listing the minor's name, date of birth, permanent residence, title to be used in the proceeding and the method by which the minor may be reached during the pendency of the proceeding. The Confidential Information Sheet and all other documents containing identifying information shall be sealed in an envelope marked confidential on which the case number has been written and placed in a private file. Confidential information shall not be entered into a computer file.
- (3) The court shall maintain only one file of all papers for each case. The file shall be inspected only by the judge, specifically authorized court personnel, the minor, her attorney, her next friend, the guardian ad litem, and any other person authorized by the minor. After the proceedings are completed, the file may be opened only by order of the court for good cause shown and only for a purpose specified in the order of the court.
- (4) The file of a completed case shall not be destroyed until two years after the minor has reached the age of majority. The court shall not microfilm or otherwise copy the file.

(J) Hearing.

- (1) **Burden of Proof.** The petitioner has the burden of proof by preponderance of the evidence and must establish the statutory criteria at a hearing.
- (2) **Closed Hearing.** The hearing shall be closed to the public. The court shall limit attendance at the hearing to the minor, the minor's attorney, the next friend, the guardian ad litem, persons who are called to testify by the minor or with the minor's consent, necessary court personnel and one support person who would not be disqualified as a next friend by MCL 722.902(d); MSA 25.248(102)(d).
- (3) All relevant and material evidence may be received.
- (4) The hearing may be conducted informally in the chambers of a judge.
- (5) The hearing shall commence and be concluded within 72 hours, excluding Sundays and holidays, of the filing of the petition, unless the minor consents to an adjournment. The order of the court shall be issued within 48 hours, excluding Sundays and holidays, of the conclusion of the hearing.

(K) Order.

- (2) Order Denying Waiver, Notice of Appeal, Appointment of Counsel, Preparation of Transcript. If the order denies relief, the court shall endorse the time and date on the order. The order shall be served on the minor's attorney or, if none, the minor along with
 - (a) a unified appellate document substantially in the form approved by the state court administrator which may be used as notice of appeal, claim of appeal, request for appointment of an attorney and order of transcript, and
 - (b) a notice that, if the minor desires to appeal, the minor must file the notice of appeal with the probate court within 24 hours.

(3) **Appeal.**

(a) Upon receipt of a timely notice of appeal, the probate court must appoint counsel and order that the transcript be prepared immediately and two copies filed within 72 hours. If the minor was represented by counsel in the probate court proceedings, the court must reappoint the same attorney unless there is good cause for a different appointment. As soon as the transcript if filed, the court shall forward the file to the Court of Appeals.

D. Subchapter 5.900 Proceedings in the Family Division

Rule 5.923 Miscellaneous Hearing Procedures

(D) Electronic Equipment; Support Person. The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements, anatomical dolls, support persons, and take other measures to protect the child witness as enumerated in, and authorized by, 1987 PA 45, MCL 712A.17b; MSA 27.3178(598.17b).

Rule 5.925 Open Proceedings; Judgments and Orders; Record; Confidentiality; Expungement

(B) Record of Proceedings. A record of the proceedings on the formal calendar must be made and preserved by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. Unless otherwise provided in this subchapter, a record of other hearings may be made and preserved by a written memorandum executed by the judge or referee setting forth findings and procedures followed.

(C) **Judgments and Orders.** The form and signing of judgments are governed by subchapter 5.600.

(D) Public Access to Records; Confidential File.

- (1) General. Records of the juvenile court other than confidential files shall be open to the general public.
- (2) Confidential Files. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, and the interest of the minor.

(E) Expunging Court Records; Setting Aside Adjudications.

- (1) Definitions. When used in this subrule, unless the context otherwise indicates:
 - (a) "expunge" means to obliterate or destroy;
 - (b) "set aside" means to negate or rescind.
- (2) Court Files and Records.
 - (a) General. The court may at any time for good cause expunge its own files and records pertaining to an offense by or against a minor other than an adjudicated offense described in subrule (E)(3)(a) and (b).
 - (b) Delinquency Files and Records. The court must expunge the diversion record of a juvenile within 28 days after the juvenile becomes 17 years of age. The court must expunge the files and records pertaining to a person's juvenile offenses, other than any adjudicated offense described in subrule (E)(3)(a) and (b), when the person becomes 30 years of age.
 - (c) Child Protective Files and Records. The court shall expunge child protective files and records pertaining to the minor 25 years after the jurisdiction over the last child in the family ends.
- (3) Setting Aside Adjudication.
 - (a) Life Offenses and Criminal Traffic Violations. The court may not set aside an adjudication of an offense which if committed by an adult would be a felony for which the maximum punishment is life imprisonment, or an offense which if committed by an adult would be a criminal traffic violation.

- (b) The court may only set aside an adjudication of a reportable juvenile offense pursuant to the procedures of MCL 712A.18e; MSA 27.3178(598.18e).
- (c) Upon the entry of an order setting aside an adjudication, the court shall:
 - (i) send a copy of the order to the Central Records Division of the Department of State Police and to the law enforcement agency involved in the apprehension of the juvenile; and
 - (ii) expunge its own files and records pertaining to the offense by the juvenile.

Rule 5.950 Waiver of Jurisdiction

- (C) Grant of Waiver. If the court determines that it is in the best interests of the juvenile and public to waive jurisdiction over the juvenile, the court must comply with subrules (C)(1) through (C)(3).
 - (1) The court must enter a written order granting the motion to waive jurisdiction and transferring the matter to the appropriate court having general criminal jurisdiction for arraignment of the juvenile on an information.
 - (2) The court must make findings of fact and conclusions of law forming the basis for entry of the waiver order. The findings and conclusions may be incorporated in a written opinion or stated on the record.
 - (3) The court must advise the juvenile, orally or in writing, that
 - (a) the juvenile is entitled to appellate review of its decision to waive jurisdiction,
 - (b) the juvenile must seek review of the decision in the Court of Appeals within 21 days of the order to preserve the appeal of right, and
 - (c) if the juvenile is financially unable to retain a lawyer, the court will appoint a lawyer to represent the juvenile on appeal.
 - (4) The court shall send a copy of the order and a copy of the written opinion or transcript of the findings and conclusions of the court, to the court having general criminal jurisdiction without charge.
- **(D) Denial of Waiver.** If the court does not waive jurisdiction, the court shall enter an order and make written findings or place them on the record. A transcript of the court's findings or a copy of the written opinion shall be sent to the prosecutor, juvenile, or juvenile's attorney upon request.

Rule 5.993 Appeals to Other Courts

- **(C) Procedure; Delayed Appeals; Use of Minor's Initials.** Except as modified by this rule, Chapter 7 of the rules governs appeals from the juvenile court.
 - (2) Use of Minor's Initials in Published Opinions. On appeals from a judgment of the juvenile court in a child protective proceeding, the Supreme Court Reporter shall delete the full name of the minor and replace the name with the minor's initials before the Court of Appeals or Supreme Court opinion is published.

7-04 CHAPTER 6. CRIMINAL PROCEDURE

A. Subchapter 6.000 General Provisions

Rule 6.001 Scope

- (A) Felony Cases. The rules in subchapters 6.000 6.500 govern matters of procedure in criminal cases cognizable in the circuit courts and in courts of equivalent criminal jurisdiction.
- **(B) Misdemeanor Cases.** MCR 6.001 6.004, 6.106, 6.125, 6.427, 6.445, and the rules in subchapters 6.600 6.800 govern matters of procedure in criminal cases cognizable in the district courts.
- (C) **Juvenile Cases.** The rules in subchapter 6.900 govern matters of procedure in the district courts and in circuit court and courts of equivalent criminal jurisdiction in cases involving juveniles against whom the prosecutor has authorized the filing of a criminal complaint as provided in MCL 764.1f; MSA 28.860(6).
- **(D) Civil Rules Applicable.** The provisions of the rules of civil procedure apply to cases governed by this chapter, except
 - (1) as otherwise provided by rule or statute,
 - (2) when it clearly appears that they apply to civil actions only, or
 - (3) when a statute or court rule provides a like or different procedure.

Depositions and other discovery proceedings under subchapter 2.300 may not be taken for the purposes of discovery in cases governed by this chapter. The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in cases governed by this chapter.

(E) Rules and Statutes Superseded. The rules in this chapter supersede all prior court rules in this chapter and any statutory procedure pertaining to and inconsistent with a procedure provided by a rule in this chapter.

Rule 6.003 Definitions

For purposes of subchapters 6.000 - 6.800;

(6) "Court reporter" includes a court recorder.

B. Subchapter 6.100 Preliminary Proceedings

Rule 6.102 Arrest on a Warrant

- (A) **Issuance of Warrant.** A court must issue an arrest warrant, or a summons in accordance with MCR 6.103, if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.
- **(B) Probable Cause Determination.** A finding of probable cause may be based on hearsay evidence and rely on factual allegations in the complaint, affidavits from the complainant or others, the testimony of a sworn witness adequately preserved to permit review, or any combination of these sources.

Rule 6.104 Arraignment on the Warrant or Complaint

(F) Arraignment Procedure; Recording. A verbatim record must be made of the arraignment.

Rule 6.106 Pretrial Release

- (G) Custody Hearing.
 - (2) Hearing Procedure.
 - (b) The rules of evidence, except those pertaining to privilege, are not applicable. Unless the court makes findings required to enter an order under subrule (B)(1) or (2), the defendant must be ordered released under subrule (C) or (D). A verbatim record of the hearing must be made.

Rule 6.107 Grand Jury Proceedings

(A) Right to Grand Jury Records. Whenever an indictment is returned by a grand jury or a grand juror, the person accused in the indictment is entitled to the part of the record, including a transcript of the part of the testimony of all witnesses appearing before the grand jury or grand juror, that touches on the guilt or innocence of the accused of the charge contained in the indictment.

(B) Procedure to Obtain Records.

(1) To obtain the part of the record and transcripts specified in the subrule (A), a motion must be addressed to the chief judge of the circuit court in the county in which the grand jury issuing the indictment was convened, or, if the grand judy convened on the order of the Recorder's Court for the City of Detroit, then to the chief judge of that court.

- (2) The motion must be filed within 14 days after arraignment on the indictment or at a reasonable time thereafter as the court may permit on a showing of good cause and a finding that the interests of justice will be served.
- (3) On receipt of the motion, the chief judge shall order the entire record and transcript of testimony taken before the grand jury to be delivered to him or her by the person having custody of it for an in camera inspection by the chief judge.
- (4) Following the in camera inspection, the chief judge shall certify the parts of the record, including the testimony of all grand jury witnesses that touches on the guilt or innocence of the accused, as being all of the evidence bearing on that issue contained in the record, and have two copies of it prepared, one to be delivered to that attorney for the accused, or to the accused if not represented by an attorney, and one to the attorney charged with the responsibility for prosecuting the indictment.
- (5) The chief judge shall then have the record and transcript of all testimony of grand jury witnesses returned to the person from whom it was received for disposition according to law.

Rule 6.110 The Preliminary Examination

(C) Conduct of Examination. . . . A verbatim record must be made of the preliminary examination.

Rule 6.113 The Arraignment on the Indictment or Information

(D) Preliminary Examination Transcript. Unless the defendant pleads guilty at the arraignment or the parties otherwise agree, the court must order the court reporter to transcribe and file the record of the preliminary examination. The order must also provide for the payment of the reporter's fees.

C. Subchapter 6.300 Pleas

Rule 6.302 Pleas of Guilty and Nolo Contendere

(F) Plea Record. . . . A verbatim record must be made of the plea proceeding.

Rule 6.303 Pleas of Guilty But Mentally Ill

Before accepting a plea of guilty but mentally ill, the court must comply with the requirements of MCR 6.302. In addition to establishing a factual basis for the plea pursuant to MCR 6.302(D)(1) or (D)(2)(b), the court must examine the psychiatric reports prepared and hold a hearing that establishes support for a finding that the defendant was mentally ill, but not insane, at the time of the offense to which the plea is entered. The reports must be made a part of the record.

Rule 6.304 Plea of Not Guilty by Reason of Insanity

(D) Report of Plea. After accepting the defendant's plea, the court must forward to the center for forensic psychiatry a full report, in which form of a settled record, of the facts concerning the crime to which the defendant pleaded and the defendant's mental state at the time of the crime.

D. Subchapter 6.400 Trials

Rule 6.402 Waiver of Jury Trial by the Defendant

B) Waiver and Record Requirements. Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. . . . A verbatim record must be made of the waiver proceeding.

Rule 6.403 Trial by the Judge in Waiver Cases

When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the fact specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Rule 6.410 Jury Trial; Number of Jurors; Unanimous Verdict

(A) Number of Jurors. Except as provided in this rule, a jury that decides a case must consist of 12 jurors. At any time before a verdict is returned, the parties may stipulate with the court's consent to have the case decided by a jury consisting of a specified number of jurors less than 12.... The stipulation and procedure described in this subrule must take place in open court and a verbatim record must be made.

Rule 6.414 Conduct of Jury Trial

(A) Court's Responsibility. . . . The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.

Rule 6.419 Motion for Directed Verdict of Acquittal

(D) Explanation of Rulings on Record. The court must state orally on the record or in a written ruling made a part of the record its reasons for granting or denying a motion for a directed verdict of acquittal and for conditionally granting or denying a motion for a new trial.

Rule 6.420 Verdict

(A) **Return.** The jury must return its verdict in open court.

Rule 6.425 Sentencing; Appointment of Appellate Counsel

- (D) Imposition of Sentence.
 - (2) **Sentencing Procedure.** The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing the court, complying on the record, must: . . .
- (E) Advice Concerning the Right to Appeal; Appointment of Counsel.
 - (1) In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant, on the record, that . . .
 - (2) In a case involving a conviction following a plea of guilty or nolo contendere, immediately after imposing sentence, the court must advise the defendant, on the record, that . . .
- (F) Appointment of Lawyer; Trial Court Responsibilities in Connection With Appeal.
 - (2) Order to Prepare Transcript. The appointment order also must
 - (a) direct the court reporter to prepare and file, within the time limits specified in MCR 7.210,
 - (i) the trial or plea proceeding transcript,
 - (ii) the sentencing transcript, and
 - (iii) such transcripts of other proceedings not previously transcribed, that the court directs or the parties request, and
 - (b) provide for the payment of the reporter's fees.

The court must promptly serve a copy of the order on the prosecutor, the defendant, the appointed lawyer, the court reporter, and the Michigan Appellate Assigned Counsel System.

(3) Order as Claim of Appeal. If the defendant's request for a lawyer, timely or not, was made within the time for filing a claim of appeal, the order described in (F)(1) and (2) must be entered on a form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Appointment of Counsel," and the court must immediately send to the Court of Appeals a copy of the order and a copy of the judgment being appealed. . . . (see SCAO approved form CC 403).

Rule 6.431 New Trial

(B) Reasons for Granting. On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

Rule 6.433 Documents for Postconviction Proceedings; Indigent Defendant

- (A) Appeals of Right. An indigent defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that they are required to pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents without cost to the defendant, and, unless the transcript has already been ordered as provided in MCR 6.425(F)(2), must order the preparation of the transcript.
- **(B) Appeals by Leave.** An indigent defendant who may file an application for leave to appeal may obtain copies of transcripts and other documents as provided in this subrule.
 - (1) The defendant must make a written request to the sentencing court for specified documents or transcripts indicating that they are required to prepare an application for leave to appeal.
 - (2) If the requested materials have been filed with the court and not provided previously to the defendant, the court clerk must provide a copy to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.
 - (3) If the request includes the transcript of a proceeding that has not been transcribed, the court must order the materials transcribed and filed with court. After the transcript has been prepared, court clerk must provide a copy to the defendant.

- (C) Other Postconviction Proceedings. An indigent defendant who is not eligible to file an appeal of right or an application for leave to appeal may obtain records and documents as provided in this subrule.
 - (1) The defendant must make a written request to the sentencing court for specific court documents or transcripts indicating that the materials are required to pursue postconviction remedies in a state or federal court and are not otherwise available to the defendant.
 - (2) If the documents or transcripts have been filed with the court, the clerk must provide the defendant with copies of such materials without cost to the defendant.
 - (3) The court may order the transcription of additional proceedings if it finds that there is good cause for doing so. After such a transcript has been prepared, the clerk must provide a copy to the defendant.
 - (4) Nothing in this rule precludes the court from ordering materials to be supplied to the defendant in a proceeding under subchapter 6.500.

Rule 6.435 Correcting Mistakes

- (A) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party, and after notice if the court orders it.
- **(B) Substantive Mistakes.** After giving the parties an opportunity to be heard, and provided it has not yet entered judgement in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous.
- **(C) Correction of Record.** If a dispute arises as to whether the record accurately reflects what occurred in the trial court, the court, after giving the parties the opportunity to be heard, must resolve the dispute and, if necessary, order the record to be corrected.
- **(D)** Correction During Appeal. If a claim of appeal has been filed or leave to appeal granted in the case, corrections under this rule are subject to MCR 7.208(A) and (B).

E. Subchapter 6.500 Postappeal Relief

Rule 6.508 Procedure; Evidentiary Hearing; Determination

(C) Evidentiary Hearing. If the court decides that an evidentiary hearing is required, it shall schedule and conduct the hearing as promptly as practicable. At the hearing, the rules of evidence other than those with respect to privilege do not apply. The court shall assure that a verbatim record is made of the hearing.

F. Subchapter 6.600 Criminal Procedure in District Court

Rule 6.610 Criminal Procedure Generally

- (A) **Precedence.** Criminal cases have procedure over civil actions.
- **(C) Record.** Unless a writing is permitted, a verbatim record of the proceedings before a court under subrules (D)-(F) must be made.
- (E) Pleas of Guilty and No Contest.
 - (4) A defendant may be informed of the trial rights listed in subrule (3)(b) as follows:
 - (a) on the record,
 - (b) in a writing made part of the file, or
 - (c) in a writing referred to on the record.

If the court uses a writing pursuant to subrule (E)(4)(b) or (c), the court shall address the defendant and obtain from him or her orally on the record, a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

G. Subchapter 6.900 Rules Applicable to Juveniles Charged with Life Offenses Subject to the Jurisdiction of District Court and Criminal Division of Circuit Court

Rule 6.901 Applicability

(B) Scope. The rules apply to proceedings in the district court and the criminal division of circuit court concerning a juvenile against whom the prosecuting attorney has authorized the filing of a criminal complaint and warrant charging an enumerated life offense instead of approving the filing of a petition in the juvenile court (family division of circuit court)

. . .

Rule 6.911 Preliminary Examination

- (A) Waiver. The juvenile may waive a preliminary examination if the juvenile is represented by an attorney and the waiver is made and signed by the juvenile in open court. The magistrate shall find and place on the record that the waiver was freely, understandingly, and voluntarily given.
- (B) Transfer to Juvenile Court (now Family Division of Cirucit Court). If the magistrate, following preliminary examination, finds that there is no probable cause that a life offense occurred or that there is no probable cause that the juvenile committed the life offense, but that some other offense occurred that if committed by an adult would constitute a crime, and that there is probable cause to believe that the juvenile committed that offense, the magistrate shall transfer the matter to the juvenile court (family division of circuit court) of the county where the offense is alleged to have been committed for further proceedings. If the court transfers the matter to juvenile court (family division of circuit court), a transcript of the preliminary examination shall be sent to the juvenile court (family division of circuit court) without charge upon request.

Rule 6.931 Juvenile Sentencing Hearing

- (E) Juvenile Sentencing Hearing Procedure.
 - (4) **Findings.** The court must make findings of fact and conclusions of law forming the basis for the juvenile probation and commitment decision or the decision to sentence the juvenile as though an adult offender. The findings and conclusions may be incorporated in a written opinion or stated on the record.

7-05 CHAPTER 7. APPELLATE RULES

A. Subchapter 7.100 Appeals to Circuit Court

Rule 7.101 Procedure Generally

(A) Applicability; Scope.

(1) This rule applies to appeals to the circuit court from the district court and probate court, each referred to as "trial court" in MCR 7.101 and 7.103. The term "circuit court" includes the Recorder's Court of the City of Detroit as to appeals of which that court has jurisdiction. In appeals from probate court, the term "clerk" refers to the probate register.

(B) Time for Taking Appeal.

- (1) **Appeal of Right.** Except when another time is prescribed by statute or court rule, an appeal of right must be taken within
 - (a) 21 days after the entry of the order or judgment appealed from; or
 - (b) 21 days after the entry of an order denying a motion for new trial or judgment notwithstanding the verdict, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the original 21-day period.

A motion for rehearing or reconsideration of a motion mentioned in subrule (B)(1)(b) does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21-day period.

(2) **Appeal by Leave.** When an appeal of right is not available, or the time for taking an appeal of right has passed, the time for filing an application for leave to appeal is governed by MCR 7.103.

(C) Manner of Taking an Appeal; Appeal of Right.

(1) **Claim of Appeal.** To appeal of right, within the time for taking an appeal, an appellant must file a claim of appeal with the circuit court clerk and a copy of the claim of appeal with the trial court clerk and pay the fee, if required by law. The parties are named in the same order as they appeared in the trial court, but with the added designation "appellant" or "appellee". The claim must state

"[Name of aggrieved party] claims an appeal from the [judgment or order] entered [date] in [name of the trial court]."

The appellant or the appellant's attorney must date and sign the claim of appeal and place his or her business address and telephone number under the signature.

- (2) **Other Requirements.** Within the time for taking an appeal, the appellant, in addition to doing the acts required by subrule (C)(1), must do the following:
 - (d) Order in writing a copy of the full transcript and secure payment for it. On the appellant's motion, with notice to the appellee, the trial court may order that a lesser portion, or none, of the proceedings be transcribed. The appellee may file with the trial court a transcript of a portion of the proceedings not filed by the appellant. Except in appeals that the circuit court hears **de novo**, if a transcript of relevant proceedings cannot be obtained, the appellant may initiate procedures for preparation of a settled record in the manner provided in MCR 7.210 (B)(2).
 - (e) File in the trial court exhibits in the appellant's possession.
- (3) **Notice and Proof of Service.** Within 7 days after the claim of appeal is filed, the appellant must serve on the appellee and on any other person entitled by rule or statute to notice of the appeal:
 - (a) a copy of the claim of appeal;
 - (b) a statement specifying
 - (i) when an appeal bond, if any, was filed, the amount of the bond, and the sureties,
 - (ii) when the required fees were paid,
 - (iii) when an act was performed under subrule (C)(2)(b) and the nature of the act:
 - (c) a copy of the reporter's or recorder's certificate showing that
 - (i) the transcript has been ordered and payment secured, with the estimated date of completion,
 - (ii) the transcript has been furnished, or
 - (iii) there is no record to be transcribed.

Proof of service, the reporter's or recorder's certificate, and the required statement must be filed in the trial court and the circuit court.

(D) Appellee's Appearance; Cross Appeal.

- (1) **Notice of Appearance.** Within 14 days after being served with the claim of appeal, the required statement, and the reporter's or recorder's certificate, the appellee must file an appearance in the trial court and circuit court and file exhibits in his or her possession with the trial court clerk.
- (2) **Cross Appeal.** The appellee may take a cross appeal by filing a claim of cross appeal with his or her appearance. The provisions of this rule regarding an appeal govern a cross appeal.
- **(E) Effect of Appeal.** The circuit court clerk shall assign a file number to an appeal when it is filed. The trial court retains jurisdiction until the trial court clerk sends the record to the circuit court clerk under subrule (F).

(F) Record on Appeal.

- (1) Within 28 days after filing the claim of appeal, the appellant must file with the trial court the transcript or a copy of the reporter's or recorder's certificate and a statement that the transcript is not yet available.
- (2) After the appellant makes the filing under subrule (F)(1), the clerk or register of the trial court shall
 - (a) ensure that the docket entries are correct and ready for transmittal;
 - (b) ensure that all exhibits have been filed;
 - (c) ensure that all relevant documents and papers from the court file are ready for transmittal; and
 - (d) determine that the required fees have been paid and required bond filed.
- (3) If the record is ready for transmittal, the court shall sign an order transmitting the record. The trial court may eliminate exhibits from the record.
- (4) If the transcript is not yet available, the trial court shall postpone transmittal of the record, enter an order to facilitate the preparation of the record, and notify the circuit court of the postponement and of the estimated date of transmittal.
- (5) The trial court clerk must send the record to the circuit court clerk and notify the parties of the transmittal.

(G) **Dismissal of an Appeal.** If an appellant does not comply with subrule (F)(1) and the trial court or circuit court has not granted a motion for further time, the appeal may be considered abandoned, and the trial court may dismiss the appeal on 7 days' notice to the parties. The trial court clerk must promptly notify the circuit court of a dismissal, and the circuit court shall dismiss the claim of appeal. Compliance with subrule (F)(1) after the 28-day period does not preclude dismissal of the appeal unless the appellant shows a reasonable excuse for the late compliance.

(H) Stay of Proceedings.

(1) Civil Actions.

- (a) Unless otherwise provided by rule or ordered by the trial court, an execution may not issue and proceedings may not be taken to enforce an order or judgment until the expiration of the time for taking an appeal under subrule (B).
- (b) An appeal does not stay execution unless
 - (i) the appellant files a stay bond to the opposing party as provided by this rule or by law; or
 - (ii) the appellant is exempted by law from filing a bond or is excused from filing a bond under MCL 600.2605; MSA 27A.2605 or MCR 3.604(L) and the trial court grants a stay on motion.
- (c) The stay bond must be set by the trial court in an amount adequate to protect the opposing party. If the appeal is by a person against whom a money judgment has been entered, it must be not less than 1-1/4 times the amount of the judgment. The bond must:
 - (i) recite the names and designations of the parties and the judge in the trial court, identify the parties for whom and against whom judgment was entered, and state the amount recovered;
 - (ii) contain the conditions that the appellant
 - (A) will diligently prosecute the appeal to a decision and, if a judgment is rendered against him or her will pay the amount of the judgment, including costs and interest;
 - (B) will pay the amount of the judgment, if any, rendered against him or her in the trial court, including costs and interest, if the appeal is dismissed;

- (C) will pay any costs assessed against him or her in the circuit court; and
- (D) will perform any other act prescribed in the statute authorizing appeal; and
- (iii) be executed by the appellant with one or more sufficient sureties as required by MCR 3.604.

If the appeal is from a judgment for the possession of land, the bond must include the conditions provided in MCR 4.201(N)(4).

(d) Unless otherwise provided in this rule, the filing of a bond stays all further proceedings in the trial court under the order or judgment appealed from. If an execution has issued, it is suspended by giving notice of the bond to the officer holding the execution.

(2) **Probate Proceedings.**

- (a) The probate court has continuing jurisdiction to decide other matters arising out of a proceeding in which an appeal is filed.
- (b) A stay in an appeal from the probate court is governed by MCL 600.867; MSA 27A.867, MCL 700.35; MSA 27.5035, and MCR 5.802(C).
- (3) **Civil Infractions.** An appeal bond and stay in a civil infraction proceeding is governed by MCR 4.101(G).
- (4) **Criminal Cases.** Unless a bond pending appeal is filed with the trial court, a criminal judgment may be executed immediately even though the time for taking an appeal has not elapsed. The granting of bond and the amount of it are within the discretion of the trial court, subject to the applicable laws and rules on bonds pending appeals in criminal cases.
- (5) **Request for Stay Filed in Circuit Court.** If a request for a stay pending appeal is filed in the circuit court, the court may condition a stay on the filing of a new or higher bond than otherwise required by these rules with appropriate conditions and sureties satisfactory to the court.

(I) Filing and Service of Briefs.

(1) Within 21 days after the trial court clerk notifies the parties that the record on appeal has been sent to the circuit court, the appellant must file a brief in the circuit court and serve it on the appellee. The appellee may file and serve a reply brief within 21 days after the appellant's brief is served on the appellee. The appellant's brief must comply with MCR 7.212(C), and the appellee's brief must comply with MCR 7.212(D).

- (2) Before the brief is due, a party may withdraw the transcript and exhibits by giving the clerk a written receipt for them. A party may use them only to prepare the brief and must return them to the clerk when the party is finished. The court may order their return by a specified date.
- **(K) Oral Arguments.** A party who has filed a timely brief is entitled to oral argument by writing "ORAL ARGUMENT REQUESTED" in bold-face type on the title page of the party's brief.
- (L) Setting for Hearing. Within 14 days after the appellee's brief is filed or within 14 days after the time for filing it has expired, the circuit court clerk shall
 - (1) schedule the case for argument and notify the parties by mail, if a party has requested oral argument; or
 - (2) if no party has requested oral argument, submit the file to the judge to whom the appeal is assigned for decision.
- (M) Judgment in Circuit Court; Process. After the appeal is decided or dismissed, the circuit court clerk shall promptly send to the trial court clerk a copy of the judgment, order, or opinion entered in the circuit court and all documents previously received from the trial court. The trial court issues further process.

(N) Control of Appeal Process.

- (1) If the trial court postpones transmittal of the record or transmittal is otherwise delayed, the circuit court may on its own initiative exercise superintending control over the trial court, the court reporter or recorder, or other personnel to prevent delay.
- (2) The circuit court may on the appellee's motion or its own initiative issue an order to show cause why the appeal should not be dismissed. An order to show cause is not required for a dismissal under subrules (G) or (J).
- (3) A party may obtain interlocutory review of the appellate process by filing a motion in the circuit court under the rules governing motion practice.
- (4) The circuit court may accelerate the appellate process on a party's motion.
- (O) Costs. Costs in an appeal to the circuit court may be taxed as provided in MCR 2.625. A prevailing party may tax only the reasonable costs incurred in the appeal, including:
 - (1) the cost of an appeal or stay bond;
 - (2) the transcript;

- (3) documents required for the record on appeal;
- (4) fees paid to the clerk or to the trial court clerk incident to the appeal;
- (5) taxable costs allowed by law in appeals to the Supreme Court (MCL 600.2441; MSA 27A.2441); and
- (6) other expenses taxable under applicable court rules or statutes.

(P) Vexatious Proceedings.

- (1) The circuit court may, on its own initiative or the motion of a party, dismiss an appeal, assess actual and punitive damages, or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because
 - (b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court.

Rule 7.102 Appeals from Municipal Courts

- (A) **Time for Taking Appeal.** To appeal of right from a municipal court, an appellant must comply with MCR 7.101(B) and (C)(1).
- **(B) Procedure on Appeal.** Except when inapplicable because of subrule (C), MCR 7.101 governs procedure on appeal.
- **(C) Review in Circuit Court.** Review in the circuit court is a retrial of the issues on evidence introduced in the circuit court. Depositions in the trial court may be used. The circuit court may render any judgment or enter any order that should have been rendered or entered in the trial court, and may grant other relief as may be required for the just disposition of the appeal.

Rule 7.103 Application for Leave to Appeal

(B) Procedure.

- (4) The application must be noticed for hearing in the circuit court at least 14 days after its filing. The circuit court may shorten the notice period on a showing of a need for immediate consideration.
- (6) An application under subrule (A)(2) or an application that is not timely under subrule (B)(1), must be accompanied by an affidavit explaining the delay. The circuit court may consider the length of and the reasons for the delay in deciding whether to grant the application.

- (C) Leave To Appeal Granted. Immediately after an order granting leave to appeal is entered, the appellant must file a copy with the trial court and serve a copy on the appellee. MCR 7.101 governs further proceedings, except that:
 - (1) the appellant must perform the acts required by MCR 7.101(C) within 7 days after the entry of the order granting leave to appeal; however, filing and service of a claim of appeal are not required;
 - (2) an appellee may file a claim of cross appeal within 14 days after service of the order granting leave to appeal; and
 - (3) the appellant must perform the acts required by MCR 7.101(F)(1) within 28 days after the entry of the order granting leave to appeal.

Rule 7.104 Appeals from Administrative Agencies

- (A) Appeals Under MCL 600.631; MSA 27A.631. An appeal in the circuit court under MCL 600.631; MSA 27A.631 is governed by MCR 7.101 and 7.103, except that the bond requirements do not apply.
- (B) Appeals Under Michigan Employment Security Act.
 - (1) To obtain review of an order or decision of the Michigan Employment Security Board of Review, a party must file in the circuit court
 - (a) a claim of appeal within 30 days after the mailing to the party of the board of review's decision (see MCR 7.101[C][1]); and
 - (b) proof that a copy was served on the board of review and all interested parties.

The board of review is not an appellee. The timely filing of the claim of appeal constitutes the taking of an appeal. Failure to take any further steps to pursue the appeal is governed by MCR 7.101 (G), (J), and (N).

- (2) Within 14 days after service of the claim of appeal, the appellee must file an appearance in the circuit court. A cross appeal may be filed with the appearance. See MCR 7.101(D).
- (3) Within 42 days after the claim of appeal is served on the board of review or within further time the circuit court allows, the board of review must send to the circuit court clerk a certified copy of the record of proceedings before the referee and the board of review and notify the parties of the transmittal.
- (4) The appeal is heard by the circuit court on the certified record. Briefs and oral argument are governed by MCR 7.101(I), (K), and (L).

(C) Appeals From Michigan Civil Service Commission. An appeal from a decision of the Michigan Civil Service Commission is governed by the provisions for appeals from administrative agencies in the Administrative Procedures Act. MCL 24.201 et seq.; MSA 3.560(101) et seq.

B. Subchapter 7.200 Court of Appeals

Rule 7.201 Organization and Operation of Court of Appeals

- (B) Court of Appeals Clerk; Place of Filing Papers; Fees.
 - (1) The court shall appoint a chief clerk who is subject to the requirements imposed on the Supreme Court clerk in MCR 7.319. The clerk's office must be located in Lansing and be operated under the court's direction. With the court's approval, the clerk may appoint assistant and deputy clerks.
 - (2) Papers to be filed with the court or the clerk must be filed in the clerk's office in Lansing or with a deputy clerk in Detroit, Southfield, or Grand Rapids. Fees paid to a deputy clerk must be forwarded to the clerk's office in Lansing. Claims of appeal, applications, motions, and complaints need not be accepted for filing until all required documents have been filed and the requisite fees have been paid.
 - (3) If a case is accepted for filing without all of the required documents, transcripts, or fees, the appellant, or the plaintiff in an original action under MCR 7.206, must supply the missing items within 21 days after the date of the clerk's notice of deficiency. The chief judge or another designated judge may dismiss the appeal and assess costs if the deficiency is not remedied within that time.

Rule 7.204 Filing Appeal of Right; Appearance

- **(A) Time Requirements.** The time limit for an appeal of right is jurisdictional. The provisions of MCR 1.108 regarding computation of time apply.
 - (1) An appeal of right in a civil action must be taken within
 - (a) 21 days after entry of the judgment or order appealed from;
 - (b) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period; or
 - (c) another time provided by law.

If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 21 days after the final judgment or order, the 21-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 21 days after the decision on the motion.

- (2) An appeal of right in a criminal case must be taken
 - (a) in accordance with MCR 6.425(F)(3);
 - (b) within 42 days after entry of an order denying a timely motion for the appointment of a lawyer pursuant to MCR 6.425(F)(1);
 - (c) within 42 days after entry of the judgment or order appealed from; or
 - (d) within 42 days after the entry of an order denying a motion for a new trial, for judgment of acquittal, or for resentencing, if the motion was filed within the time provided by MCR 6.419(B), 6.429(B)(1), or 6.431(A)(1), as the case may be.

A motion for rehearing or reconsideration of a motion mentioned in subrules (A)(1)(b) or (A)(2)(d) does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21- or 42-day period.

- **(B) Manner of Filing.** To vest the Court of Appeals with jurisdiction in an appeal of right, an appellant shall file with the clerk within the time for taking an appeal
 - (1) the claim of appeal, and
 - (2) the entry fee.
- **(C)** Other Documents. With the claim of appeal, the appellant shall file the following documents with the clerk:
 - (1) a copy of the judgment or order appealed from;
 - (2) a copy of the certificate of the court reporter or recorder filed under subrule (E)(4), a statement by the attorney that the transcript has been ordered (in which case the certificate of the court reporter or recorder must be filed as soon as possible thereafter), or a statement by the attorney that there is no record to be transcribed; [see form CC 402]

- **(E) Trial Court Filing Requirements.** Within the time for taking the appeal, the appellant shall file in the court or the tribunal from which the appeal is taken
 - (1) a copy of the claim of appeal;
 - (2) any fee required by law;
 - (3) any bond required by law as a condition for taking the appeal; and
 - (4) unless there is no record to be transcribed, the certificate of the court reporter or recorder stating that a transcript has been ordered and payment for it made or secured, and that it will be filed as soon as possible or has already been filed.

Rule 7.205 Application for Leave to Appeal

- (A) Time Requirements. An application for leave to appeal must be filed within 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule.
- **(B)** Manner of Filing. To apply for leave to appeal, an appellant shall file with the clerk:
 - (1) 5 copies of an application for leave to appeal (one signed), stating the date and nature of the judgment or order appealed from; concisely reciting the appellant's allegations of error and the relief sought; setting forth a concise argument, conforming to MCR 7.212(C), in support of the appellant's position on each issues; and, if the order appealed from is interlocutory, setting forth facts showing how the appellant would suffer substantial harm by awaiting final judgment before taking an appeal;
 - (2) 5 copies of the judgment or order appealed from, of the calendar or docket entries, of the opinion or findings of the lower court, tribunal, or agency, and of any opinion or findings reviewed by the lower court, tribunal, or agency;
 - (3) if the appeal is from an administrative tribunal or agency, or from a circuit court on review of an administrative tribunal or agency, evidence that the tribunal or agency has been requested to send its record to the Court of Appeals;
 - (4) 1 copy of certain transcripts, as follows:
 - (a) in an appeal relating to the evidence presented at an evidentiary hearing in a civil or criminal case, the transcript of the evidentiary hearing, including the opinion or findings of the court which conducted the hearing;
 - (b) in an appeal from the circuit court or recorder's court after appeal from another court, the transcript of proceedings in the court reviewed by the circuit court or recorder's court;

- (c) in an appeal challenging jury instructions, the transcript of the entire charge to the jury;
- (d) in an appeal from a judgment in a criminal case entered pursuant to a plea of guilty or nolo contendere, the transcripts of the plea and sentence;
- (e) in an appeal from an order granting or denying a new trial, such portion of the transcript of the trial as, in relation to the issues raised, permits the court to determine whether the trial court's decision on the motion was for a legally recognized reason and based on arguable support in the record;
- (f) in an appeal raising a sentencing issue, the transcript of the sentencing proceeding and the transcript of any hearing on a motion relating to sentencing;
- (g) in an appeal raising any other issue, such portion of the transcript as substantiates the existence of the issue, objections or lack thereof, arguments of counsel, and any comment or ruling of the trial judge.

If the transcript is not yet available, or if there is no record to be transcribed, the appellant shall file a copy of the certificate of the court reporter or recorder or a statement by the appellant's attorney as provided in MCR 7.204(C)(2). The appellant must file the transcript with the Court of Appeals as soon as it is available.

- (5) if the appeal is from a probate court order, 5 copies of the probate court's certification of the issue, as required by law;
- (6) a notice of hearing for the first Tuesday at least 21 days after a copy of the filed documents is served on all other parties;
- (7) proof that a copy of the filed documents was served on all other parties;
- (8) the entry fee.
- (C) Answer. Any other party in the case may file with the clerk, before the date of hearing,
 - (1) 5 copies of an answer to the application (one signed);
 - (2) 5 copies of an opposing brief (one signed) conforming to MCR 7.212(D), except that transcript page references are not required unless a transcript has been filed; and
 - (3) proof that a copy of each of the filed documents was served on the appellant and any other appellee.

(D) Decision.

- (1) There is no oral argument. The application is decided on the documents filed and, in an appeal from an administrative tribunal or agency, the certified record.
- (2) The court may grant or deny the application; enter a final decision; grant other relief; request additional material from the record; or require a certified concise statement of proceedings and facts from the court, tribunal, or agency whose order is being appealed. The clerk shall enter the court's order and mail copies to the parties.
- (3) If an application is granted, the case proceeds as an appeal of right, except that the filing of a claim of appeal is not required and the time limits for the filing of a cross appeal and for the taking of the other steps in the appeal, including the filing of the court reporter's or recorder's certificate if the transcript has not been filed (14 days), run from the date the order granting leave is certified.
- (4) Unless otherwise ordered, the appeal is limited to the issues raised in the application and supporting brief.

Rule 7.207 Cross Appeals

- **(B) Manner of Filing.** To file a cross appeal, the cross appellant shall file with the clerk a claim of cross appeal in the form required by MCR 7.204(D) and the entry fee
 - (1) within 21 days after the claim of appeal is filed with the Court of Appeals or served on the cross appellant, whichever is later, if the first appeal was of right; or
 - (2) within 21 days after the clerk certifies the order granting leave to appeal, if the appeal was initiated by application for leave to appeal. . . .
- (C) Additional Requirements. The cross appellant shall perform the steps required by MCR 7.204(E) and (F), except that the cross appellant is not required to order a transcript or file a court reporter's or recorder's certificate unless the initial appeal is abandoned or dismissed. Otherwise the cross appeal proceeds in the same manner as an ordinary appeal.
- (D) Abandonment of Dismissal of Appeal. If the appellant abandons the initial appeal or the court dismisses it, the cross appeal may nevertheless be prosecuted to its conclusion. Within 21 days after the clerk certifies the order dismissing the initial appeal, if there is a record to be transcribed, the cross appellant shall file a certificate of the court reporter or recorder that a transcript has been ordered and payment for it made or secured and will be filed as soon as possible or has already been filed.

Rule 7.210 Record on Appeal

- (A) Content of Record. Appeals to the Court of Appeals are heard on the original record.
 - (1) **Appeal From Court.** In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.
 - (2) Appeal From Tribunal or Agency. In an appeal from an administrative tribunal or agency, the record includes all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except those summarized or omitted in whole or in part by stipulation of the parties. Testimony not transcribed when the certified record is sent for consideration of an application for leave to appeal, and not omitted by stipulation of the parties, must be filed and sent to the court as promptly as possible.
 - (3) **Excluded Evidence.** The substance or transcript of excluded evidence offered at a trial and the proceedings at the trial in relation to it must be included as part of the record on appeal.
 - (4) **Stipulations.** The parties in any appeal to the Court of Appeals may stipulate in writing regarding any matters relevant to the lower court or tribunal or agency record if the stipulation is made a part of the record on appeal and sent to the Court of Appeals.

(B) Transcript.

- (1) Appellant's Duties; Orders; Stipulations.
 - (a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by MCR 6.425(F)(2) or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals.
 - (b) In an appeal from probate court in an estate or trust proceeding, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcript.

- (c) On the appellant's motion, with notice to the appellee, the trial court or tribunal may order that some portion less than the full transcript (or no transcript at all) be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant. The filing of the motion extends the time for filing the court reporter's or recorder's certificate until 7 days after entry of the trial court's or tribunal's order on the motion.
- (d) The parties may stipulate that some portion less than the full transcript (or none) be filed.
- (e) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or tribunal clerk and sent as the record of testimony in the action.
- (2) **Transcript Unavailable.** When a transcript of the proceedings in the trial court or tribunal cannot be obtained from the court reporter or recorder, the appellant shall file a settled statement of facts to serve as a substitute for the transcript.
 - (d) The statement of facts and the certifying order must be filed with the trial court or tribunal clerk and a copy of the certifying order must be filed with the Court of Appeals.

(3) Duties of Court Reporter or Recorder.

- (a) Certificate. Within 7 days after a transcript is ordered by a party or the court, the court reporter or recorder shall furnish a certificate stating that the transcript has been ordered and payment for it made and secured and that it will be filed as soon as possible or has already been filed.
- (b) Time for Filing. The court reporter or recorder shall give precedence to transcripts necessary for interlocutory criminal appeals and custody cases. The court reporter or recorder shall file the transcript with the trial court or tribunal clerk within
 - (i) 14 days after it is ordered for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case;
 - (ii) 28 days after it is ordered in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere;
 - (iii) 42 days after it is ordered in any other interlocutory criminal appeal or custody case;

(iv) 91 days after it is ordered in other cases.

The Court of Appeals may extend or shorten these time limits in an appeal pending in the court on motion filed by the court reporter or recorder or a party.

- (c) Copies. Additional copies of the transcripts required by the appellant may be ordered from the court reporter or recorder or photocopies may be made of the transcript furnished by the court reporter or recorder.
- (d) Form of Transcript. The transcript must be filed in one or more volumes under a hard-surfaced or other suitable cover, stating the title of the action, and prefaced by a table of contents showing the subject matter of the transcript with page references to the significant parts of the trial or proceedings, including the testimony of each witness by name, the arguments of the attorneys, and the jury instructions. The pages of the transcript must be consecutively numbered on the bottom of each page. Transcripts with more than one page, reduced in size, printed on a single page are permitted and encouraged, but a page in that format may not contain more than four reduced pages of transcript.
- (e) Notice. Immediately after the transcript is filed, the court reporter or recorder shall notify the Court of Appeals and all parties that it has been filed and file in the Court of Appeals an affidavit of mailing of notice to the parties.
- (f) Discipline. A court reporter or recorder failing to comply with the requirements of these rules is subject to disciplinary action by the courts, including punishment for contempt of court, on the court's own initiative or motion of a party.
- (g) Responsibility When More Than One Reporter or Recorder. In a case in which portions of the transcript must be prepared by more than one reporter or recorder, unless the court has designated another person, the person who recorded the beginning of the proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it, and giving the notice required by subrule (B)(3)(e).
- **(C) Exhibits.** Within 21 days after the claim of appeal is filed, a party possessing any exhibits offered in evidence, whether admitted or not, shall file them with the trial court or tribunal clerk, unless by stipulation of the parties or order of the trial court or tribunal they are not to be sent, or copies, summaries, or excerpts are to be sent. Xerographic copies of exhibits may be filed in lieu of originals unless the trial court or tribunal orders otherwise. When the record is returned to the trial court or tribunal, the trial court or tribunal clerk shall return the exhibits to the parties who filed them.

- **(D) Reproduction of Records.** Where facilities for the copying or reproduction of records are available to the clerk of the court or tribunal whose action is to be reviewed, the clerk, on a party's request and on deposit of the estimated cost or security for the cost, shall procure for the party as promptly as possible and at the cost to the clerk the requested number of copies of documents, transcripts, and exhibits on file.
- **(E) Use of Records.** Until the record is sent to the Court of Appeals, the parties may withdraw any transcripts and exhibits filed in the case on written receipt to the clerk. The party may retain the transcripts and exhibits only as long as necessary to prepare an appellate brief and shall promptly return them to the clerk.
- **(F) Record on Motion.** If, before the time the complete record on appeal is sent to the Court of Appeals, a party files a motion that requires the Court of Appeals to have the record, the trial court or tribunal clerk shall, on request of a party or the Court of Appeals, send the Court of Appeals the documents needed.
- (G) Service of Record. Within 21 days after the transcript is filed with the trial court clerk, the appellant shall serve a copy of the entire record on appeal, including the transcript and exhibits, on each appellee. However, copies of documents the appellee already possesses need not be served. Proof that the record was served must be promptly filed with the Court of Appeals and the trial court or tribunal clerk. If the filing of a transcript has been excused as provided in subrule (B), the record is to be served within 21 days after the filing of the transcript substitute.
- (H) Transmission of Record. Within 21 days after the briefs have been filed or the time for filing the appellee's brief has expired, or when the court requests, the trial court or tribunal clerk shall send to the Court of Appeals the record on appeal in the case pending on appeal, except for those things omitted by written stipulation of the parties. Weapons, drugs, or money are not to be sent unless the Court of Appeals requests. The trial court or tribunal clerk shall append a certificate identifying the name of the case and the paper with reasonable definiteness and shall include as part of the record
 - (1) a list of docket entries in the case;
 - (2) all opinions, findings, and orders of the court or tribunal; and
 - (3) the order or judgment appealed from.

Transcripts and all other documents which are part of the record on appeal must be attached in one or more file folders or other suitable hard-surfaced binders showing the name of the trial court or tribunal, the title of the case, and the file number.

(I) **Return of Record.** After the Court of Appeals disposes of an appeal, the Court of Appeals shall promptly send the original record, together with a certified copy of the opinion, judgment, or order entered by the Court of Appeals

- (1) to the Clerk of the Supreme Court if a timely application for leave to appeal is filed in the Supreme Court, or
- (2) to the clerk of the court or tribunal from which it was received when
 - (a) the period for a timely application for leave to appeal to the Supreme Court has expired without the filing of an application, and
 - (b) there is pending in the Court of Appeals no
 - (i) timely motion for rehearing,
 - (ii) timely petition for a special panel under Administrative Order 1990-6, or
 - (iii) timely request by a judge of the Court of Appeals for a special panel under Administrative Order 1990-6,

and the period for such a timely motion, petition, or request has expired.

(J) Notice by Trial Court or Tribunal Clerk. The trial court or tribunal clerk shall promptly notify all parties of the return of the record in order that they may take the appropriate action in the trial court or tribunal under the Court of Appeals mandate.

7-06 CHAPTER 8. ADMINISTRATIVE RULES OF COURT

A. Subchapter 8.100 General Administrative Orders

Rule 8.105 General Duties of Clerks

(B) Filing of Papers. The clerk shall endorse on every paper the date on which it is filed. The clerk shall keep a file folder for each action, bearing the civil action number assigned to it, in which the clerk shall keep all pleadings, process, orders, and judgments filed in the action. The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court.

(C) Access to Files.

- (1) Unless access to a file is restricted by statute, court rule, or an order entered pursuant to subrule (D), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in subrule (C)(2) and (C)(3).
- (2) If a person wishes to obtain copies of papers in a file, the clerk shall provide copies upon receipt of the cost of reproduction. If the clerk prefers, he or she may permit the requesting person to make copies at his or her own expense under the direct supervision of the clerk.
- (3) A court, by administrative order adopted pursuant to MCR 8.112(B), may make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions.

(D) Sealed Records.

- (1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals court records, in whole or in part, in any action or proceeding, unless
 - (a) a party has filed a written motion that identifies the specific interest to be protected,
 - (b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and
 - (c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.
- (2) In determining whether good cause has been shown, the court must consider the interests of the public as well as of the parties.

- (3) The court must provide any interested person the opportunity to be heard concerning the sealing of the record.
- (4) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C).
- (5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.
- (6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.
- (7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.

Rule 8.108 Court Reporters and Recorders

(A) Scope of Rule. This rule prescribes the duties of court reporters and recorders, the procedure for certifying them, the effect of non-certification, objections to certification, and display requirements.

(B) Attendance at Court; Taking Testimony.

- (1) The court reporter or recorder shall attend the court sessions under the direction of the court and take a verbatim record of the following:
 - (a) the voir dire of prospective jurors;
 - (b) the testimony;
 - (c) the charge to the jury;
 - (d) in a jury trial, the opening statements and final arguments;
 - (e) the reasons given by the court for granting or refusing any motion made by a party during the course of a trial; and
 - (f) opinions and orders dictated by the court and other matters as may be prescribed by the court.

This subrule does not apply to actions tried in the small claims division of the district court or in the municipal courts. In the probate court proceedings, the reporter or recorder shall take a verbatim record of proceedings as required by law and chapter 5 of these rules.

- (2) The court reporter or recorder who begins to record a case shall take the record of the entire case unless he or she shows good cause for failure to do so or is otherwise excused by the court.
- **(C) Records Kept.** The court reporter or recorder who takes the testimony on the trial or the hearing of any case shall prefix the record of the testimony of each witness with the full name of the witness and the date and time the testimony was taken. At the conclusion of the trial of the case the reporter or recorder shall secure all of the records and properly entitle them on the outside, and shall safely keep them in his or her office.
- **(D) Transfer of Records; Inspection.** If the court reporter or recorder dies, resigns, is removed from office, or leaves the state, his or her records in each case must be transferred to the clerk of the court in which the case was tried. The clerk shall safely keep the records subject to the direction of the court. The records are a part of the record of each case and are subject to inspection in the same manner as other records. On order of the court, a transcript may be made from the records and filed as a part of the record in the case.
- **(E) Furnishing Transcript.** The court reporter or recorder shall furnish without delay, in legible English, a transcript of the records taken by him or her (or any part thereof) to any party on request. The reporter or recorder is entitled to receive the compensation prescribed in the statute on fees from the person who makes the request.

(F) Filing Transcript.

- (1) On order of the trial court, the court reporter or recorder shall make and file in the clerk's office a transcript of his or her records, in legible English, of any civil or criminal case (or any part thereof) without expense to either party; the transcript is part of the records in the case.
- (2) Except when otherwise provided by contract, the court reporter or recorder shall receive from the appropriate governmental unit the compensation specified in the statute on fees for a transcript ordered by a court.

(G) Certification.

(1) Certification Requirement.

- (a) Except as provided in this subrule, only reporters or recorders certified pursuant to this subrule may record or prepare transcripts of proceedings held in Michigan courts or of depositions taken in Michigan pursuant to these rules. This rule applies to the preparation of transcripts of videotaped courtroom proceedings or videotaped or audiotaped depositions, but not to the recording of such proceedings or depositions by means of videotaping. A recorder holding a CEO certification under subrule (G)(7)(b) may record proceedings but may not prepare transcripts.
- (b) Proceedings held pursuant to MCR 6.102 or 6.104 need not be recorded by persons certified under this rule; however, transcripts of such proceedings must be prepared by court reporters or recorders certified pursuant to this rule.
- (c) An indigent party who is represented by a non-profit legal aid program providing free civil legal services to the indigent may use persons who are not certified pursuant to this rule to transcribe and file depositions taken by videotaping or audiotaping. Such depositions shall be otherwise prepared and certified in accordance with this rule.
- (d) Any person who acts in the capacity of a court reporter or recorder shall not maintain an action in the courts of this state for the collection of compensation for the performance of an act for which certification is required by this rule without alleging and proving that the person was certified under this rule at the time of the performance of the act. "Person" refers to both individuals and the entity or entities for which a court reporter or recorder performs services.
- (e) Any other court rule notwithstanding, an objection to the status of a court reporter's or recorder's certification or lack thereof must be placed on the record at the outset of the court proceeding or deposition or that objection is waived. If the objection is waived, the use of transcripts of the court proceeding or deposition for any purpose provided in these rules shall be allowed.
- (f) Prior to the beginning of any deposition taken under these rules, the court reporter or recorder must display to all counsel initially present, and to each other person attending the deposition who is not represented by counsel, proof that the reporter or recorder has been certified as required by this rule. Proof of such certification, by certification number, shall also be displayed on the title page and certificate page of each court and deposition transcript and on the stationery and business cards, if any, of each court reporter or recorder required to be certified by this rule.

- (2) Court Reporting and Recording Board of Review.
 - (a) The Supreme Court shall appoint a Court Reporting and Recording Board of Review, composed of
 - (i) a Court of Appeals judge, to be the chairperson;
 - (ii) a circuit or recorder's judge;
 - (iii) a probate judge;
 - (iv) a district judge;
 - (v) a court reporter who is an employee of a Michigan court;
 - (vi) a court recorder who is an employee of a Michigan court;
 - (vii) a court reporter who is not an employee of a Michigan court;
 - (viii) a court recorder who is not an employee of a Michigan court; and,
 - (ix) an attorney.
 - (b) Appointments to the board shall be for terms of 4 years. A board member may be reappointed to a new term. Initial appointments may be of different lengths so that no more than 3 terms expire in the same year. The Supreme Court may remove a member at any time.
 - (c) The state court administrator shall assign a staff person to serve as board secretary.
- (3) *Certification by Testing.*
 - (a) At least twice each year the board shall administer an examination testing knowledge and speed, and, as to a recorder, familiarity with basic logging techniques and minor repair and maintenance procedure. The board shall determine the passing score.
 - (b) In order to be eligible for registration for an examination, an applicant must
 - (i) be at least 18 years of age,
 - (ii) be a high school graduate, and

(iii) not have been under sentence for a felony for a period of two years.

In addition, an applicant for the certified shorthand reporter examination must have satisfactorily completed an approved, accredited, or recognized course of study in court reporting.

- (c) The registration fee is \$60.
- (4) Reciprocal Certification. A reporter or recorder certified in another state may apply to the board for certification based on the certification already obtained.
- (5) *Temporary Certification*. A new reporter or recorder may receive one temporary certification to enable him or her to work until the results of the next test are released. If the person does not take the test, the temporary certification may not be extended unless good cause is shown. If the person takes the test and fails, the board may extend the temporary certification.
- (6) Renewal, Review, and Revocation of Certification.
 - (a) Certifications under this rule must be renewed annually. The fee for renewal is \$30. Renewal applications must be filed by August 1. A renewal application filed after that date must be accompanied by an additional late fee of \$30. The board may require certified reporters and recorders to submit, as a condition of renewal, such information as the board reasonably deems necessary to determine that the reporter or recorder has used his or her reporting or recording skills during the preceding year.
 - (b) The board must review the certification of a reporter or recorder who has not used his or her skills in the preceding year, and shall determine whether the certification of such a reporter or recorder may be renewed without the necessity of a certification test.
 - (c) The board may review the certification of a reporter or recorder and may impose sanctions, including revoking the certification, for good cause after hearing before the board.
- (7) *Designations*. The board shall assign an identification number to each person certified. A court reporter or recorder must place the identification number assigned on his or her communications with the courts, including certificates, motions, affidavits, and transcripts. The board will use the following certification designations:
 - (a) certified electronic recorder (CER);
 - (b) certified electronic operator (CEO);

- (c) certified shorthand reporter (CSR);
- (d) certified stenomask reporter (CSMR).

The designations are to be used only by reporters or recorders certified by the board. A reporter or recorder may be given more than one designation by passing different tests.

Rule 8.109 Mechanical Recording of Court Proceedings

- (A) Official Record. If a trial court uses audio or video recording devices for making the record of court proceedings, it shall use only recording devices approved by the state court administrator pursuant to MCR 8.103(10). Except where such a requirement was previously imposed by statute, this provision shall apply only to recording devices purchased after the effective date of this subrule.
- (B) Other Recordings. On motion of an attorney or of a party appearing on his or her own behalf, a court may permit audio recording of a part or all of a proceeding and may permit photographic recording of visual exhibits. The court may regulate the manner of audio or photographic recording so that it does not disrupt the proceeding. An audio or photographic recording made under this rule may be used solely to assist in the prosecution or defense during the proceeding recorded; it may not be used publicly.

Rule 8.110 Chief Judge Rule

(C) Duties and Powers of Chief Judge.

- (3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:
 - (c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial and administrative work of the court, and require their presence to perform that work;
 - (d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any;
 - (e) coordinate judicial and personnel vacations and absences, subject to the provisions of subrule (D);
- (6) A chief judge may delegate administrative duties to a trial court administrator or others.

B. Subchapter 8.200 Administrative Rules Applicable in District Court

Rule 8.202 Payment of Assigned Attorneys and Transcript Costs

(B) Appeals. If an indigent defendant appealing to circuit court from a district or municipal court conviction is entitled to an assigned attorney or a transcript, the cost shall be paid by the same political subdivision or divisions that were responsible for or would have been responsible for paying an assigned attorney under subrule (A).

C. Subchapter 8.300 Administrative Rules Applicable in Probate Court

Rule 8.302 Documents and Files

Original orders and letters of authority, after being recorded, must be placed in the files of the court. For security purposes, testamentary documents of deceased persons, bonds, orders, and such other documents as the court directs must be copied by microfilming or other means promptly after filing or issuance and preserved in the records of the court separately from the files.

7-07 CHAPTER 3. SPECIAL PROCEEDINGS AND ACTIONS

A. Subchapter 3.200 Domestic Relations Actions

Rule 3.215 Domestic Relations Referees

- (D) Conduct of Hearings.
 - (4) An electronic or stenographic record must be kept of all hearings.

B. Subchapter 3.700 Personal Protection Proceedings

Rule 3.705 Issuance of Personal Protection Orders

- (B) Hearings.
 - (3) The hearing shall be held on the record.

Rule 3.708 Contempt Proceedings for Violation of Personal Protection Orders

- (H) The Violation Hearing.
 - (4) *Judicial Findings*. At the conclusion of the hearing, the court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Section 8 Selected Michigan Compiled Laws

Selected Michigan Compiled Laws

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Selected Michigan Compiled Laws

8-01 APPOINTMENT AND COMPENSATION

A. Circuit Court

MCL 46.12A. County boards of commissioners; insurance, pension or retirement benefits for county employees.

(3) A circuit court stenographer is eligible for membership in, and the benefits of, a pension or retirement benefit under a plan established pursuant to this section, or a social security plan established by the court or 1 of the counties that pays a portion of the compensation of a circuit court stenographer.

MCL 600.1101. Court reporters or certified court recorders number

Sec 1101. Each circuit court in this state shall have as many court reporters or certified court recorders as it has judges.

MCL 600.1104. Appointment, oath of office; appointment in more than 1 circuit

Sec. 1104. Every reporter or recorder shall be appointed by the governor after having first been recommended by the judge or judges of the court to which he or she is appointed and he or she is an officer of that court. Before entering upon the duties of his or her office he or she shall take and subscribe the constitutional oath of office which shall be filed in the office of the secretary of state. No person may be appointed a reporter or recorder for more than 1 judicial circuit unless he or she personally performs the duties of reporter or recorder in each of the circuits for which he or she has been appointed.

MCL 600.1105. Term, suspension

Sec. 1105. Every reporter or recorder shall hold office at the pleasure of the governor unless suspended for incompetency or misconduct, by the court to which he or she is appointed. In the case of a suspension, the reporter or recorder shall cease to hold the office of reporter or recorder unless by order of the court his or her suspension is rescinded. If the suspension is not rescinded within 30 days of the order of suspension, the office shall become vacant.

MCL 600.1106. Vacancy; temporary absence; payment of salary

Sec. 1106. In case of a vacancy in the office of the reporter or recorder from any cause of a permanent nature, the appointment shall be made in accordance with section 1104, after notice has been given the governor of the vacancy by the chief or only judge of the circuit or the court administrator.

8-01-01 (8/92)

In case of a temporary absence of the reporter or recorder, the reporter or recorder shall appoint some competent person who has been approved by the judge to act as a reporter or recorder pro tempore and who shall be paid by the reporter or recorder in whose place he or she acts. If the temporary absence of the reporter or recorder is due to illness, the reporter or recorder pro tempore shall be paid out of the county treasury, such sum as may be approved by the county board of commissioners or in counties having a board of auditors by that board. However, such payment shall not exceed payment for 30 calendar days in any 1 calendar year.

MCL 600.1107. Additional reporters or recorders

Sec. 1107. Every reporter or recorder may appoint 1 or more assistants who have first been approved by the circuit judge or judges and who shall qualify as reporters or recorders as prescribed in this statute. The assistant or additional reporter or recorder shall have the power to act in the place of the reporter or recorder and shall be paid by the reporter or recorder. The reporter or recorder or circuit judge shall have the power to revoke the appointment at any time. Whenever the chief or only judge of any judicial circuit deems it necessary for the dispatch of business of the court he or she may authorize the reporter or recorder to employ 1 or more temporary assistants who shall receive compensation to be paid by the county, after the judge of the court certifies to the reasonableness of the compensation.

MCL 600.1114. Salary, payment by counties

Sec. 1114. (1) The reporter or recorder of each circuit shall receive as compensation for his or her services the salary specified in this chapter payable in monthly installments out of the treasuries of the counties composing the circuit of which he or she is the reporter or recorder upon the order of the clerk of the court or board of county auditors who are authorized and required to draw the orders. The county treasurer shall pay an installment upon presentation of an order.

MCL 600.1115. Apportionment of salary in multi-county circuits

Sec. 1115. In every circuit composed of more than 1 county, unless some other method of apportionment is prescribed in this act to make up the salary of the reporter or recorder, each county board of commissioners in the circuit shall appropriate annually such portion of the amount of the salary as shall be assigned to it by the chief or only circuit judge in proportion to the number of civil actions commenced in the circuit court for those counties respectively during the preceding year.

It shall be the duty of the chief or only circuit judge or each circuit composed of more than 1 county on the first day of January of each year or as soon thereafter as possible, to apportion the amount of the salary to be paid by each county in his or her circuit as provided in this section and to notify the clerk of each county in the circuit of the proportion to be paid by that county. If there is only 1 county in the circuit, the salary of the reporter or recorder shall be paid out of the treasury of that county in the manner prescribed in section 1114(1).

MCL 600.1116. Membership in retirement or social security plan

Sec. 1116. All reporters or recorders shall be eligible for membership in and benefits of the retirement or the social security plan by the county or any 1 of the counties which pays a portion of his or her salary.

MCL 600.1121. Salary; first circuit

Sec. 1121. In the first circuit, the stenograph shall be paid an annual salary of \$12,000.00.

Editor's Note: The annual salary for all circuit court reporters or recorders (MCL 600.1122 and MCL 600.1124 through MCL 600.1162h) shall be \$12,000.00.

MCL 600.1162i. Stenographer; annual salary

Section 1162i. In a judicial circuit created after May 1, 1978, the stenographer shall be paid an annual salary of \$12,000.00.

MCL 600.1168. Supplemental salaries

Sec. 1168. The county board of commissioners of the counties comprising any judicial circuit may appropriate annually from the general fund additional amounts to supplement the salary of any reporter or recorder.

MCL 600.1171. Expenses

Sec. 1171. The reporters or recorders shall be entitled to receive in addition to the salary provided for in this act the necessary and actual expenses incurred in attending court in the counties other than the county in which the reporter or recorder resides.

Upon filing with the clerk of the county in which the reporter or recorder has attended a sworn statement that the money was expended by the reporter or recorder and that the expenditures were necessary in the performance of his or her service in that county, the clerk shall draw an order for payment and the treasurer of the county shall pay the ordered sum to the person entitled to it on the presentation of an order for payment properly drawn by the clerk. If the reporter or recorder does not reside within the circuit to which he or she is appointed, he or she shall be considered for the purpose of this section to reside in the county where the chief or only circuit judge of that circuit resides.

MCL 600.1175. Wayne and Kent counties; officers for reporters or recorders

Sec. 1175. In the counties of Wayne and Kent, the county auditor shall provide a suitable office for the use of the reporters or recorder contiguous to the office of the clerk of the county.

MCL 600.1179. Assignment of reporters or recorders

Sec. 1179. Upon the request of the judge to which the reporter or recorder is assigned the court administrator may assign a report or recorder to a circuit other than the circuit to which the reporter or recorder was appointed. The reporter or recorder shall continue to receive his or her salary from the circuit to which he or she was appointed. If the salary listed in this chapter for the circuit visited is higher that the regular salary of the reporter or recorder, the circuit visited shall pay the difference to the reporter or recorder.

B. District Court

MCL 600.8602. Appointment of recorders or reporters

Sec. 8602. (1) Each judge of the district court shall appoint his or her own reporter or recorder.

(2) Pursuant to supreme court rule, the chief or only judge of the district may appoint additional certified recorders or reporters. Appointed additional recorders or reporters shall perform the duties and functions of recorder or reporter when so assigned and shall perform other functions and duties as may be assigned by the chief or only judge of the district or the court administrator.

MCL 600.8615. Compensation

Sec. 8615. The annual salary of district court recorders or reporters appointed pursuant to section 8602(1) shall be not less than \$8,000.00 per year.

MCL 600.8621. Compensation to be paid by district control unit, proportional contributions, recording devices and supplies

Sec. 8621. (1) District court recorders and reporters shall be paid by each district control unit. In districts consisting of more than 1 district control unit, each district control unit shall contribute to the salary in the same proportion as the number of cases entered and commenced in the district control unit bears to the number of cases entered and commenced in the district, as determined by the judges of the district court under rules prescribed by the supreme court.

(2) The state shall purchase and pay for a recording device for each district or municipal judge, but the replacement, maintenance, and repair of the recording devices and the cost of supplies shall be paid for by the district or municipality. The recording devices shall be the property of the district or municipal court.

MCL 600.8625. Expenses, procedure for payment

Sec. 8625. The recorders or reporters of district courts composed or more than 1 county shall be entitled to receive, in addition to the salary provided for in this act, their necessary and actual expenses incurred in attending court in the counties of their district other than the county in which the recorder or reporter resides. Upon filing with the clerk of the district control unit in which the recorder or reporter has attended court a sworn statement that the expenses were incurred by the recorder or reporter and that the expenditures were necessary in performing such services, the district control unit treasurer shall pay such sum to the person entitled to it on presentation of an order properly drawn by the clerk, which order the clerk shall draw on receiving the sworn statement.

MCL 600.8626. Residence defined

Sec. 8626. For the purposes of this chapter, the residence of a recorder or reporter who does not reside in the district in which he or she serves shall be deemed to be the same as the residence of the district judge for whom he or she serves.

MCL 600.8631. Fees for transcripts ordered by the parties or district or circuit judge; recovery as taxable costs

Sec. 8631. (1) A district court recorder or reporter shall be entitled to receive for a transcript ordered by any person the same fees as provided by law for circuit court reporters or recorders. For a transcript ordered by the district judge or a circuit judge, recorders or reporters shall be entitled to receive from the district control unit the same compensation.

(2) The amount of recorder's or reporter's fees paid shall be recoverable as part of the taxable costs by the prevailing party in a motion or on appeal.

C. Probate Court

MCL 600.835. Official court reporters or certified recorders

- Sec. 835. (1) The probate judge or chief probate judge of any county or probate court district may appoint, and in counties having a population of 50,000 or more shall appoint, 1 or more official court reporters or certified recorders of the probate court, at a reasonable salary fixed by the county board of commissioners. The reporters or recorders so appointed shall take and subscribe the constitutional oath of office, which shall be filed with the county clerk of the county.
- (2) The reporter or recorder serving in a probate court district shall be entitled to receive, in addition to the salary provided for in this section, the necessary and actual expenses incurred in attending court in the county other than the county in which the reporter or recorder resides. Upon filing with the clerk of the county in which the reporter or recorder attended court a sworn statement that the expenses were incurred by the reporter or recorder and that the expenditures were necessary in performing the services, the clerk shall draw an order for payment and upon presentation of that properly drawn order, the treasurer of the county shall pay the ordered sum to the person entitled to the payment. If the reporter or recorder does not reside within the probate court district in which he or she serves, he or she shall be considered for the purpose of this subsection to reside in the county where the probate judge of that district resides.

MCL 600.839. Conflicting employment, probate court judges and employees

Sec. 839. (1) A probate judge, probate register, or employee of the probate court shall not be:

- (a) A fiduciary or appraiser of an estate under the jurisdiction of the probate court in the county or probate court district in which he is a probate judge, probate register, or employee.
- (b) An attorney or counsel in an action or matter which may depend upon, or relate to, a sentence or order made or entered by the probate judge in the county or probate court district in which he is a probate judge, probate register, or employee.
- (c) An attorney or counsel for or against a fiduciary appointed under the jurisdiction of the probate court in the county or probate court district in which he is a probate judge, probate register, or employee, in an action or proceeding brought by or against the fiduciary as such or in any action or proceeding relating to the official conduct of that fiduciary.

(3) A clerk or employee of the probate court may not be an appraiser, referee, or divider of an estate which is under the jurisdiction of the probate court in the county or probate court district in which he is a clerk or employee.

D. Other

MCL 725.201. Compensation of reporters or recorders of a court of record other than circuit courts

Sec. 1. Reporters or recorders who are officers of a court of record, having general criminal jurisdiction, other than circuit courts, shall receive the same compensation received by circuit court reporters or recorders in the circuit where the court of record is located. Such compensation shall be audited and paid in the same manner and by the same authority as in the case of the compensation received by such circuit court reporters and recorders.

MCL 600.1491. Compensation and fees of freelance reporters/recorders or firms

Sec. 1491. (2) A court reporter, court recorder, stenomask reporter, or owner of a court reporting firm shall not do any of the following:

- (a) Give, directly or indirectly, any incentive, reward, or anything else of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$25.00 per transaction or \$100.00 in the aggregate per recipient each year.
- (b) Charge more than 2/3 of the price of an original transcript for a copy of that transcript.

8-02 GENERAL DUTIES

A. General

MCL 600.2159. Parties as witnesses; depositions; comment on failure of criminal defendant to testify

Sec. 2159. On the trial of any issue joined, or in any matter, suit or proceeding, in any court or on any inquiry arising in any suit or proceeding in any court, or before any officer or person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties to any such suit or proceeding named in the record, and persons for whose benefit such suit or proceeding is prosecuted, or defended, may be witnesses therein in their own behalf or otherwise, in the same manner as other witnesses, except as hereinafter otherwise provided; and the deposition of any such party or person may be taken and used in evidence under the rules and statutes governing depositions, and any such party or person may be proceeded against and compelled to attend and testify, as is provided by law for other witnesses. No person shall be disqualified as a witness in any civil or criminal case or proceeding by reason of his interest in the event of the same as a party or otherwise or by reason of his having been convicted of any crime; but such interest or conviction may be shown for the purpose of affecting his credibility. A defendant in any criminal case or proceeding shall only at his own request be deemed a competent witness, and his neglect to testify shall not create any presumption against him, nor shall the court permit any reference or comment to be made to or upon such neglect.

B. Circuit Court

MCL 600.1111. Duties, supervision

Sec. 1111. The reporter or recorder shall perform the duties assigned by the rules of the supreme court, and by the court to which he or she is appointed, under the supervision of a judge of the court to which he or she is appointed.

C. District Court

MCL 600.8331. Record of proceedings

Sec. 8331. All proceedings in the district court, except as otherwise provided by law or supreme court rule, shall be recorded as provided in 8611.

MCL 600.8341. Appeals from district court; written transcript of record

Sec. 8341. Appeals from the district court shall be on a written transcript of the record made in the district court or on a record settled and agreed to by the parties and approved by the court.

MCL 600.8601. District court certified recorder or reporter; additional functions and duties

Sec. 8601. There shall be not less than 1 district court certified recorder or reporter for each judge of the district court who, in addition to acting as official court recorder or reporter, may act as secretary to the district court judge and perform other functions and duties as may be required by rule of the supreme court.

MCL 600.8611. Recording of proceeding; recording devices

Sec. 8611. All proceedings in the district court which are to be recorded under section 8331 shall be recorded by the district court recorder by the use of recording devices approved by the state court administrator, or taken by the district court reporter.

MCL 600.8635. Verbatim records of preliminary examinations, filing; costs of examinations

Sec. 8635. (1) An original and copy of the verbatim record of all preliminary examinations in which the defendant is bound over to the circuit court for further proceedings shall be reduced to writing by the district court recorder or reporter when ordered by the circuit court and upon completion of the verbatim record shall be filed with the clerk of the circuit court or as directed by the circuit court. An original of the verbatim record of other matters as may be required by supreme court rule shall be reduced to writing by the district court recorder or reporter and upon completion of the verbatim record shall be filed with the clerk of the district court or as directed by the district court. The county shall pay the costs of transcribing preliminary examinations in accordance with the schedule provided in section 8631.

(2) If a transcript of a trial or other proceeding is ordered other than for filing in the case file, the district court recorder or reporter also shall prepare and shall file a certified copy of the transcript in the case file at the expense of the person ordering the transcript unless a copy has been filed with the court, unless the circuit court has a copy pursuant to subsection (1), or unless the chief judge of the district court orders otherwise in an order filed in the case file.

D. Probate Court

MCL 600.836. Deputy registers, clerks, reporters and recorders, allocation of duties

Sec. 836. The probate judge or chief probate judge may allocate the duties of the deputy registers, clerks, and reporters or recorders, and may combine the title and powers in any 1 or more persons.

MCL 600.859. Taking of testimony

Sec. 859. (1) The following testimony before a probate judge shall be taken by an official court reporter or by an official court recorder on a recording device approved by the state court administrator:

- (a) Testimony in contested matters.
- (b) Testimony in matters pertaining to the admission to a hospital or other facility for mentally ill or developmentally disabled persons.
- (c) Testimony in matters pertaining to persons having a contagious disease.
- (d) Testimony in other matters if requested by an interested party.
- (e) Testimony and other proceedings required by supreme court rule.
- (2) In matters not governed by subsection (1), testimony before a probate judge, probate register, or deputy probate register may be given orally without a record being made of the testimony.

E. Circuit Court - Family Division

MCL 712A.17. Hearings; jury; bond; legal counsel to represent child

Sec. 17. (1) The court may conduct a hearing other than a criminal hearing in an informal manner. The court shall require stenographic notes or another transcript to be taken of the hearing.

MCL 712A.17a. Record of hearing, tape recordings, transcription

Sec. 17a. In any case in which a record of the hearing is kept by a recording device, no transcription need be made of the hearing in the absence of a request by an interested party. The tape of the hearing shall be stored as a permanent record of the court.

F. Freelance Reporters/Recorders

Any reporter or recorder under contractual agreement is subject to the statutory and court rule requirements for certification and for producing transcripts and maintaining exhibits as well as the following:

MCL 600.1492.

- (1) A court reporter, court recorder, or stenomask reporter shall do all of the following in the performance of his or her duties:
 - (a) Deliver a transcript or statement of facts to a client or court in a timely manner as determined by law, by court order, or by agreement of the parties.
 - (b) Produce an accurate transcript or statement of facts.
 - (c) Produce complete transcripts or statements of facts, unless an excerpt of a transcript is authorized by court order, agreement of the parties, or request of a party.
 - (d) Before accepting an assignment as an independent contractor or employee to provide court reporting or recording services, request information from the person, employer, or entity engaging his or her services as to the existence and nature of the contract between the person, employer, or entity and the client to confirm that the contract is not a blanket contract in violation of section 1491(1)(b). A person, employer, or entity who is party to a blanket contract and who knowingly provides false information in reply to an inquiry required under this subdivision shall be considered to have committed an act that is grounds for discipline or censure under section 1493. This subdivision does not apply to contracts for court reporting or recording services for the courts, agencies, or instrumentalities of local units of government, this state, or the United States.
 - (e) Advertise or represent truthfully that he or she is a certified court reporter, court recorder, or stenomask reporter and that only a certified individual will be making the record.
 - (f) Charge all parties or their attorneys to an action the same price for an original transcript or statement of facts and charge all parties or their attorneys the same price for a copy of a transcript or statement of facts or for like services performed in an action.
 - (g) Stay "on the record" during a deposition unless agreed to by all parties or their attorneys or unless otherwise ordered by the court.

8-03 FEES

A. General

MCL 600.2501. Fees; allowance

Sec. 2501. For the services mentioned in this chapter, hereafter done or performed in the several courts in this state, by the officers thereof, or in any proceeding authorized by law, the fees hereinafter prescribed shall be allowed.

MCL 600.2504. Fees; special provisions

Sec. 2504. The allowance of any fees by this chapter, shall not apply to any case where special provision is otherwise made by law for any particular service, but the fees for such service shall be such as are provided in the statute requiring the service, or providing the compensation thereof.

MCL 600.2507. Fees; state officers, certified copies of certain documents

Sec. 2507. The secretary of state, the auditor general, the state treasurer and the attorney general may require searches in the respective offices of each other and in the offices of the clerks of any court of record or municipal court, or in the office of a register of deeds, for any papers, records, or documents necessary to the discharge of their respective duties, and may obtain certified copies and certified extracts of such papers, records or documents without the payment of a fee or charge.

MCL 600.2510. Page, definition

Sec. 2510. (1) When used as a measure for computing fees or compensation, "page" is defined as follows: a page shall consist of 25 lines written on paper 8-1/2 by 11 inches in size, prepared for binding on the left side, with 1-3/8 inch margin on the left side and 3/8 margin on the right side. Typing shall be 10 letters to the inch.

(2) A page prepared in accordance with the format prescribed by the state court administrative office shall be counted, billed, and paid for a full page.

MCL 600.2513. Fees; excessive amount prohibited

Sec. 2513. A judge of any court, sheriff, bailiff, district court magistrate, or other officer, or other person except attorneys at law to whom any fees or compensation shall be allowed by law for any service, shall not take or receive any other or greater fee or reward for his service, but such as is or shall be allowed by the laws of this state.

MCL 600.2516. Fees; for services actually rendered

Sec. 2516. No fee or compensation allowed by law, shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him; but this section shall not prevent any officer from demanding any fee herein allowed for any service of which he is entitled by law to require the payment previous to rendering such service.

MCL 600.2519. Fees; violation, misdemeanor, civil liability, forfeiture of office

Sec. 2519. A violation of either section 2513 or 2516 shall be deemed a misdemeanor; and the person guilty thereof shall be liable to the party aggrieved for treble the damages sustained by him, and such violation shall be a cause for forfeiture of office.

MCL 600.2522. Fees; taxation for services actually rendered

Section 2522. No fee shall be taxed for services as having been rendered by any attorney, clerk, sheriff, or other officer, in the progress of a cause, unless such service was actually rendered, except when otherwise expressly provided.

MCL 600.2525. Fees; receipt, liability for refusal

Sec. 2525. Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out in writing and deliver to such person, a particular account of such fees, specifying for what they respectively accrued, and shall receipt the same; and if he refuse or neglect to do so, he shall be liable to the party paying the same for 3 times the amount so paid.

MCL 600.2546. Certified copies of records, fee per page

Sec. 2546. Except as otherwise provided by law, in the circuit court, district court, or probate court, for all certified copies, and exemplifications of records, pleadings and proceedings furnished on request, where no special provision is otherwise made, the fee is \$10.00 plus \$1.00 per page.

MCL 600.2549. Depositions, certified copies, fees taxable as costs

Sec. 2549. Reasonable and actual fees paid for depositions of witnesses filed in any clerk's office, and for the certified copies of documents or papers recorded or filed in any public office shall be allowed in the taxation of costs only if, at the trial or when damages were assessed, the depositions were read in evidence, except for impeachment purposes, or the documents or papers were necessarily used.

B. Circuit Court

MCL 600.2543. Circuit court reporters or recorders; transcripts, fees

Sec. 2543. (1) The circuit court reporters or recorders shall be entitled to demand and receive per page for a transcript ordered by any person the sum of \$1.75 per original page and 30 cents per page for each copy, unless a lower rate is agreed upon. For a transcript ordered by the circuit judge, reporters or recorders shall be entitled to receive from the county the same compensation.

(2) Only if the transcript is desired for the purpose of moving for a new trial or preparing a record for appeal shall the amount of reporters' or recorders' fees paid for the transcript be recovered as part of the taxable costs of the prevailing party in the motion, in the court of appeals or in the supreme court.

C. District Court

MCL 600.8631. Fees for transcripts ordered by the parties or district or circuit judge; recovery as taxable costs

Sec. 8631. (1) A district court recorder or reporter shall be entitled to receive for a transcript ordered by any person the same fees as provided by law for circuit court reporters or recorders. For a transcript ordered by the district judge or a circuit judge, recorders or reporters shall be entitled to receive from the district control unit the same compensation.

(2) The amount of recorder's or reporter's fees paid shall be recoverable as part of the taxable costs by the prevailing party in a motion or on appeal.

D. Court of Claims

MCL 600.6410. Clerks; fees; service of process

Sec. 6410. (2) For making copies of records, proceedings and testimony and furnishing the same at the request of the claimant, or any other person, the clerk of the court of claims, or any reporter or recorder serving in the court of claims shall be entitled in addition to salary, to the same fees as are by law provided for court reporters or recorders in the circuit court. No charge shall be made against the state for services rendered for furnishing copies of records, proceedings, or testimony or other papers to the attorney general.

E. Freelance Reporters/Recorders and Court Reporting/Recording Firms

MCL 600.1491 - Fees and Compensation

- (2.) A court reporter, court recorder, stenomask reporter, or owner of a court reporting firm shall not do any of the following:
 - (a) Give, directly or indirectly, any incentive, reward, or anything else of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$25.00 per transaction or \$100.00 in the aggregate per recipient each year.
 - (b) Charge more than 2/3 of the price of an original transcript for a copy of that transcript.

8-04 MAINTAINING FILES/RECORDS

A. Circuit Court

MCL 600.2137. Photograph of public records; destruction of originals

Files and records of court of record other than district court

(3) A court of record other than the district court may order the destruction of court reporter or recorder note, tape, recording 15 years after the date that the note, tape, or recording was made for a felony case and 10 years after the date that the note, tape, or recording was made for any other case. One year after a transcript of a note, tape, or recording is filed with the court, the court may order the destruction of the note, tape, and recording. If a transcript of a trial or other proceeding in a court of record other than the district court is ordered other than for filing in the case file, the court reporter or recorder also shall prepare and shall file a certified copy of the transcript in the case file at the expense of the person ordering the transcript unless a copy has been filed with the court or unless the chief judge of the court orders otherwise in an order filed in the case file. As used in this subsection, "felony case" does not include proceedings in a case that occur before arraignment on information or indictment, or in a case in which the defendant is not convicted of a felony.

Files and records of judicial circuit

- (4) Except as provided in subsection (3), a judicial circuit of the circuit court may order the destruction of its files and records in a case in which action has not been taken during the 25 years immediately preceding the order of destruction. All of the following procedures shall be followed before the issuance of an order of destruction of circuit court files and records:
 - (a) The judgment or decree, if any shall be reproduced pursuant to the records media act, or separated and retained, and the original or reproduction shall be made available for public inspection.
 - (b) The circuit court shall offer the files and records subject to the order of destruction to the Michigan historical commission established by Act No. 271 of the Public Acts of 1913, as amended, being sections 399.1 to 399.9 of the Michigan Compiled Laws, or an historical commission created pursuant to Act No. 213 of the Public Acts of 1957, as amended, being sections 399.171 to 399.172 of the Michigan Compiled Laws. If the historical commission accepts the offer within 30 days, the circuit court shall transfer the files and records to the historical commission. If the historical commission does not accept the offer within 30 days, the circuit court shall issue an order of destruction.

Record Retention and Disposal, General Schedule No. 16, Circuit Court indicates that <u>untranscribed</u> stenographic notes, tapes, and recordings must be retained 15 years after the date the recording was made on felony cases and 10 years after the date the recording was made for all other cases per MCL 600.2137; MSA 27A.2137. <u>Transcribed</u> stenographic notes, tapes, and recordings must be retained 1 year after the date of filing of the transcript per MCL 600.2137; MSA 27A.2137.

B. District Court

MCL 600.8344. Civil actions, summary proceedings, civil infractions, etc; disposal of documents except docket

Sec. 8344. Except as provided in this section, not earlier than 6 years after the entry of a judgment in a civil action, including a summary proceeding or a civil infraction action, or in an ordinance violation case or a criminal case in the district court, the court may dispose of documents, records, recordings, and notes related to that action, except the docket, in accordance with a schedule adopted by the state administrative board. The court may order the destruction of notes, tapes, and recordings which have been transcribed and filed with the court 1 year after the date of the filing of the transcript. The docket shall be in a form which shall be adequate to reveal, in summary form, the general nature of the action and judgment.

Thereafter, the docket or a certified microfilm copy or photographic reproduction of the docket shall be the official record of the action and judgment. The validity and enforceability of a judgment are not affected by reason of the destruction of the physical piece of paper upon which the judgment was entered, but the docket itself, or a certified microfilm copy or photographic reproduction of the docket, shall be a complete replacement of the judgment and the records of the action. This section shall apply to judgments of municipal and common pleas courts abolished after January 1, 1969, where the judgment was entered or the action disposed or after January 1, 1969. This section shall be applicable to actions entered in the small claims division of the district court, except that a docket need not be preserved or maintained after destruction of the file.

Record Retention and Disposal, General Schedule No. 16, District Court indicates that <u>untranscribed</u> stenographic notes, tapes, and recordings must be retained 10 years after date of recording. <u>Transcribed</u> stenographic notes, tapes, and recordings (does not include videotapes) must be retained 1 year after being transcribed and filed with the court.

C. Probate Court

MCL 600.859 Taking of testimony

- (3) The reporter or recorder shall keep sufficient index of the testimony and the court shall keep the index and the original notes for at least 10 years. The reporter or recorder need not transcribe the testimony, except when a transcript is ordered by the court or a party. Except in those cases in which the testimony is transcribed and filed with the record of the case, notes pertaining to a hearing for the admission of any person to a hospital or other place of detention as a mentally ill or developmentally disabled person or as a person with a contagious disease, shall be destroyed only after the discharge of the person from the hospital or facility.
- (4) Notes may not be destroyed until after 10 years after the date of the hearing or as provided in subsection (3), whichever is longer.

Record Retention and Disposal, General Schedule No. 16, Probate Court indicates that court recorder notes, tapes, and recordings are disposable after 15 years or after discharge or dismissal under the provisions of MCL 600.859; MSA 27A.859.

D. Circuit Court - Family Division

MCL 712A.17a. Record of hearing, tape recordings, transcription

In any case in which a record of the hearing is kept by a recording device, no transcription need be made of the hearing in the absence of a request by an interested party. The tape of the hearing shall be stored as a permanent record of the court.

Record Retention and Disposal, General Schedule No. 16, Circuit Court (now for use in Circuit Court Family Division) indicates that court recorder notes, tapes, and recordings are disposable after 15 years under the provisions of MCL 600.859; MSA 27A.859.

8-05 FREELANCE REPORTERS/RECORDERS AND COURT REPORTING FIRMS

A. MCL 600.1490 - Definitions

- (1) As used in this section and sections 1491, 1492, and 1493:
 - (a) "Blanket contract" means a contract under which a court reporter, court recorder, stenomask reporter, or court reporting firm agrees to perform all court reporting or court recording services for a client for 2 or more cases at a rate of compensation fixed in the contract.
 - (b) "Court reporting firms" means a business entity that provides the services of court reporters, court recorders, or stenomask reporters.
 - (c) "Owner" means a person who has any ownership interest in a court reporting firm.

B. Contractual Agreements

MCL 600,1490.

- (2) A court reporter, court recorder, stenomask reporter, or owner of a court reporting firm shall not provide or arrange to provide court reporting or recording services if he or she is a relative, employee, attorney, or counsel of any of the parties, or is a relative or employee of an attorney or counsel of any of the parties, without disclosing that familial relationship.
- (3) A court reporter, court recorder, stenomask reporter, or owner of a court reporting firm shall not provide or arrange to provide court reporting or recording services if he or she is financially interested in the action.

MCL 600.1491.

- (1) A court reporter, court recorder, stenomask reporter, or owner of a court reporting firm shall not do either of the following:
 - (a) Enter into or arrange for any financial relationship that compromises the impartiality of court reporters, court recorders, or stenomask reporters or that may result in the appearance that the impartiality of a court reporter, court recorder, or stenomask reporter has been compromised.

(b) Enter into a blanket contract with parties, litigants, attorneys, or their representatives unless all parties to the action are informed on the record in every deposition of the fees to be charged to all parties for original transcripts, copies of transcripts, and any other court reporting services to be provided. This subdivision does not apply to contracts for court reporting or recording services for the court, agencies, or instrumentalities of local units of government, this state, or the United States.

C. MCL 600.1491 - Fees and Compensation

- (2.) A court reporter, court recorder, stenomask reporter, or owner of a court reporting firm shall not do any of the following:
 - (a) Give, directly or indirectly, any incentive, reward, or anything else of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$25.00 per transaction or \$100.00 in the aggregate per recipient each year.
 - (b) Charge more than 2/3 of the price of an original transcript for a copy of that transcript.

D. MCL 600.1492 - Duties

- (1) A court reporter, court recorder, or stenomask reporter shall do all of the following in the performance of his or her duties:
 - (a) Deliver a transcript or statement of facts to a client or court in a timely manner as determined by law, by court order, or by agreement of the parties.
 - (b) Produce an accurate transcript or statement of facts.
 - (c) Produce complete transcripts or statements of facts, unless an excerpt of a transcript is authorized by court order, agreement of the parties, or request of a party.
 - (d) Before accepting an assignment as an independent contractor or employee to provide court reporting or recording services, request information from the person, employer, or entity engaging his or her services as to the existence and nature of the contract between the person, employer, or entity and the client to confirm that the contract is not a blanket contract in violation of section 1491(1)(b). A person, employer, or entity who is party to a blanket contract and who knowingly provides false information in reply to an inquiry required under this subdivision shall be considered to have committed an act that is grounds for discipline or censure under section 1493. This subdivision does not apply to contracts for court reporting or recording services for the courts, agencies, or instrumentalities of local units of government, this state, or the United States.

- (e) Advertise or represent truthfully that he or she is a certified court reporter, court recorder, or stenomask reporter and that only a certified individual will be making the record.
- (f) Charge all parties or their attorneys to an action the same price for an original transcript or statement of facts and charge all parties or their attorneys the same price for a copy of a transcript or statement of facts or for like services performed in an action.
- (g) Stay "on the record" during a deposition unless agreed to by all parties or their attorneys or unless otherwise ordered by the court.
- (2) . . . Rules applicable to court reporters and court recorders are also applicable to court reporting firms. . .

E. MCL 600.1492 - Registration

(2) All court reporting firms and court reporters, recorders, and stenomask reporters, including out-of-state court reporting firms and court reporters, recorders, and stenomask reporters, shall register with the state court administrative office by completing an application in a form adopted by the state court administrative office. If a court reporting firm or a court reporter, recorder, or stenomask reporter fails to comply with this subsection, the state court administrative office may assess a reasonable administrative fine that is prescribed by rule of the supreme court, that does not exceed \$500.00, and that is payable to the state general fund.

F. MCL 600.1493 - Enforcement and Violations of Statute

- (1) The state court administrative office is responsible for enforcing sections 1490, 1491, and 1492 through the court recording and reporting board of review or by other administrative means.
- (2) Any violation of section 1490, 1491, or 1492 shall be cause for refusal of the state court administrative officer's board of review to issue renewal certificates to certified court reporters, court recorders, or stenomask reporters. Any willful violation of section 1490, 1491, or 1492 shall be grounds for discipline or censure, or suspension or revocation of certification as a Michigan certified court reporter, court recorder, stenomask reporter, or court reporting firm.

G. MCL 600.1494 - Applicability

Section 1490 to 1493 do not apply to official court stenographers, recorders, reporters, or stenomask reporters appointed under chapter 8, 11, or 86 while in the performance of their official duties or to a court stenographer, recorder, or reporter appointed to serve in a municipal court while in the performance or his or her official duties.

Section 9 Audio Recording Procedures

Audio Recording Procedures

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Audio Recording Procedures

9-01 INTRODUCTION

These procedures are recommended to assist in achieving maximum quality in recording. While the procedures are not mandatory, both electronic operators and court recorders are encouraged to adopt them in the course of their profession.

A. Duties and Responsibilities of Court Operator

1. General

The operator is responsible for producing a record of all proceedings in the court to which they have been assigned. The operator must produce the clearest possible recording of proceedings and must keep a written log of events in the proceeding. Satisfactory performance of the system depends almost entirely on the operator's understanding of the procedures outlined and his/her conscientious application of these procedures to his/her work in the court.

2. Specific

- a. Top priority must be given to recording of court proceedings. The operator must be in the courtroom early enough to prepare for the recording.
- b. The operator is responsible for interruptions or gaps in the tape unless the judge's order to stop the machine can be heard on the tape.
- c. The record consists of properly labeled tapes along with log notes and other accompanying information that the transcriber needs to produce a complete and accurate typed transcript of the proceedings. The operator must listen to the recording s/he is producing through headphones and maintain a log of the proceedings. To assure the quality of the audio recording and the completeness of the log materials, the operator may need to ask people to speak into a microphone, to speak louder, or to spell their names or the names of people or places they are talking about. The operator must have the headphones on at all times and **must listen to the tape, not the source**. This insures that the tape is being recorded on.

B. Duties and Responsibilities of Judge

The judge must ensure that an adequate record of proceedings has been made by:

- 1. maintaining court decorum to permit an accurate record to be recorded;
- 2. making participants aware that the court proceeding is being electronically recorded;

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- 3. speaking loudly and clearly and reminding participants to do the same;
- 4. calling the case by name and number and type of proceeding;
- 5. reminding all participants to properly identify themselves when making their initial appearance during a proceeding;
- 6. announcing on tape if a side bar conference is to be recorded;
- 7. reminding counsel, when necessary, to remain within an appropriate distance of microphones;
- 8. reminding participants not to make excessive noises that interfere with the recording such as rustling papers, tapping fingers on microphones, etc.

9-02 DAILY STARTING PROCEDURES

Planning and preparing for each day is an important function. As a general practice, the operator should establish a habit of bringing adequate supplies for preparing an accurate recording. S/he should also develop a routine for pretesting the equipment to avoid embarrassing and critical interruptions or delays caused by lack of preparation. The operator should not have to leave the courtroom to retrieve forgotten or depleted supplies.

A. Supplies

The supplies needed on a daily basis include:

- 1. court calendar;
- 2. cassette tapes for the day;
- 3. log sheets;
- 4. blue, red and highlighting pens; and
- 5. witness and exhibit lists.

B. Pretesting Procedures

The operator must test the recording system each day before proceedings begin.

- 1. Make sure the recording equipment is plugged in and that all microphones are plugged into the equipment; make certain that microphones are plugged into the proper channels.
- 2. Fill out label information on the tape.
- 3. Reset the index counter if a new tape is installed or note the index counter on the log sheet if tape has been partially used during the previous court session.
- 4. Make a test recording by turning the recording equipment on and in the record mode. Walk around to each microphone stating: "testing microphone #1", "microphone #2", etc. and lightly scrape the microphone screen with a pen cap or fingernail.
- 5. Go back to the recording equipment and rewind to the meter number at which you began the test recording (which would be on the log sheet) and listen to the test recording.
- 6. Stop the test recording and log the index number at the point the check ends.

C. Handling Problems with Recording Equipment

If there are problems with the recording equipment repeat the above steps. If they persist, try the following:

- 1. repeat the above steps;
- 2. check the tape to make sure nothing is on it or put a fresh tape in the recorder;
- 3. check connections for the microphone and headset;
- 4. check volume control or whether monitor is on "ALL".

If the problem persists, contact the service representative and use the backup recorder.

9-03 LOGGING PROCEDURES

A. Purpose and Content of Log Notes

Detailed, legible log notes are essential for the preparation of a complete and accurate transcript. The operator should remember that the transcriber must rely solely on the tape and the log notes to produce an accurate transcript. Errors, omissions, misspellings, or inconsistencies make transcript preparation more difficult.

In general, log notes serve three purposes: 1) to locate a specific proceeding, 2) to locate a specific portion of the proceeding, and 3) to aid the transcriber in preparing the transcript. The content of log notes includes: 1) the tape recorder index or digital counter numbers that correspond to the beginning of the specific portions of proceedings, 2) the times of specific events, 3) the names of speakers, 4) correct spellings of names and other uncommon words or phrases; and 5) any other pertinent notes.

B. General Procedures

1. Preparing Log At Beginning of Day

Some information necessary for a complete log is available before proceedings begin each day. This information should be obtained from the court clerk and entered on the log before court sessions begin to ensure that log notes are not inadvertently misfiled and so that the operator can more readily identify the speakers when sessions begin. Courts will have different docketing systems, so the operator must determine how recording is accomplished in his/her particular court. Some type of calendar or list of the scheduled cases can be obtained from the court clerk. At the end of each day, the operator should make certain the log contains all necessary information.

Basic case information which should be included at the beginning of the log for each proceeding is as follows and is described in more detail in this chapter:

- a. Case name
- b. Case number
- c. Court name
- d. Full name of judge and abbreviation
- e. Date
- f. Time

- g. Type of hearing
- h. Full name and "P" number of attorney for plaintiff and abbreviation
- i. Full name and "P" number of attorney for defendant and abbreviation
- j. Full names of witnesses and abbreviations
- k. Name of court recorder/operator
- 1. Tape number
- m. Microphone channels ('tracks') and name of speaker on each channel

In addition to providing the full name of each speaker, an abbreviation should be developed for identifying them throughout the remainder of the proceeding and log. See item 2, below for details.

Note: It is important to identify each speaker and the microphone channel they are using. If they move to another channel during the proceeding, as often as possible, the operator should identify the change by logging both the speaker's full name and abbreviation with the new channel. See item 5. on page 9-03-03.

2. Developing Abbreviations

Abbreviating the names of the speakers saves the operator time during logging. However, it is essential that each speaker still be identified by their full name at least once at the beginning of the log notes. **Abbreviations should be used consistently throughout the log for each proceeding** and should be as different as possible from one another so the transcriber will assign the correct names to each speaker.

Use the last name or a recognizable abbreviation rather than an initial or a number. For example:

- a. District Attorney John Beauchamp could appear as "Beau" or Bea";
- b. Defense Attorney Maria Hanson could appear as "Han" or "Hans".

There are four exceptions to not using an initial or number. They are:

- a. Court which is "C";
- b. Judge which is "J";
- c. Interpreter which is "I"; and
- d. Witnesses which are "W1", "W2", "W3", etc.

3. Index or Digital Counter

Index or counter numbers are logged for two main reasons:

- a. they are essential for playback of testimony in the courtroom; and
- b. they enable the transcriber to locate and identify specific parts of the proceeding on the tape.

When the tape changes to another tape on the recording equipment, the operator must indicate the tape number on the log, reset the counter, and insert a clean tape. Be sure to let the tape overlap and record until the end of the tape.

4. Indicating Courtroom Events

In addition to logging digital or index counter numbers, the operator must log the times for the following:

- a. when the proceeding begins;
- b. when the proceeding ends;
- c. beginning and ending times of each recess;
- d. each time the jury enters the courtroom;
- e. each time the jury leaves the courtroom;
- f. beginning and ending times of noon recess; and
- g. beginning and ending times of each off-the-record event.

The importance of indicating case event times and counters numbers in the log cannot be overemphasized. If a transcript of all or a portion of a proceeding is ordered, the transcribers will need this information to produce an accurate and timely transcript.

5. Identifying Multiple Speakers

The audiotape transcribers will be able to identify speakers by the channel or track on which they have been recorded only **when there is no more than one speaker per track**. Because the recording system will routinely have tracks on which more than one speaker is recorded, transcribers will depend on the operator's log for accurate speaker identification.

Court cases involving multiple attorneys will result in many speakers being recorded on a single channel. In such instances, it will be necessary to make certain that each attorney is clearly recorded and that proper speaker identification is marked in the log next to the counter number corresponding to the beginning of that speaker's recording.

A similar situation occurs when attorneys use the speaker's stand (lectern). A single microphone will be used by a number of speakers during the course of a proceeding. These speakers will most likely be recorded on other channels as well during other parts of the same proceeding. Again, the transcribers will depend on the log for proper identification of the speakers.

Motions are often argued in front of the bench rather than at the stand or the counsel table. In such instances, several people will be speaking into a single channel. The log must properly identify each speaker to ensure accurate transcription.

C. Specific Procedures

The following are instructions for logging specific types of events in a proceeding.

1. Voir Dire (Jury)

Voir dire is logged the same as other proceedings. The words "Voir dire" should be written on the line opposite the counter number for the beginning of voir dire. Remember to verify spellings of all names and use juror numbers or names when they are speaking.

2. Witness Called

Clearly mark the name of each witness on the log sheet in a red pen or highlighting pen when a witness is called. Example: Witness: <u>Joseph Smith</u>

3. Examination of Witnesses

For examination of witnesses, indicate on the log the type of examination, the name of the person conducting the examination, and the key points of the testimony. Direct, cross, redirect, and recross-examination should all be designated in the log with the corresponding times and counter numbers. Example: Direct - by Mr. Mazur

The following are definitions of the type of examinations.

a. Direct Examination

Direct examination is the first questioning of a witness by the party on whose behalf the witness is called.

b. Cross-Examination

Cross-examination is the first questioning of a witness by the party opposed to the party who called the witness. A witness may be called as an adverse witness under the statute MCL 600.2161; MSA 27A.2161 for cross-examination. That witness is then cross-examined by all parties.

c. Redirect Examination

Redirect examination follows cross-examination. Redirect examination is the subsequent questioning of a witness by the party on whose behalf the witness is called.

d. Recross-Examination

Recross-examination follows redirect examination and is the subsequent questioning of a witness by the party opposed to the party who called the witness. This procedure is followed with every witness until the prosecutor or plaintiff rests. The defendant may, at that time, call witnesses on his/her behalf and the above procedure is again followed with every witness until the defendant rests.

e. Rebuttal

If new matter is brought out by the defense attorney during the presentation of the defendant's case, the prosecution or plaintiff may introduce evidence intended to contradict or rebut this new matter.

4. Testimony

a. The content of testimony is logged by writing down key words. Below is an example of a question and three ways the question might be logged.

(Question asked by Attorney Hanson): "Where were you on the night of May 5th when you heard Louis tell you that he didn't want to work for the company any more?"

	<u>Time</u>	Counter #	<u>Speaker</u>	
1)	2:07	123	Hans	Q Where/May 5/Louis/work
2)	2:07	123	Hans	Q Where were you/heard Louis/company
3)	2:07	123	Hans	Q /May 5/Louis/work

The slashes (/) in the above examples indicate there is a break in the sentence where the testimony was not logged.

b. If there are long periods of question and answer examination, it is not necessary to log every exchange. Periodic notations throughout these long examinations will at least provide various points for searching for a particular section when playback is requested from the court.

Instead of logging the speaker identification for every question and answer, simply draw an arrow pointing downward beside the speakers' names where they are initially logged. This arrow indicates that everything following represents questions by the same attorney and answers from the same witness. The "Q" and "A" can also be omitted after the first exchange. Of most importance is logging counter numbers and key words or phrases.

For example, if an attorney is questioning a witness about the theft of an automobile, s/he may start by asking a series of questions about when and where the auto was last seen, then a series of questions on the condition of the auto, and then a series of questions about who stole the auto. This example could be logged as follows:

	<u>Time</u>	Counter #	<u>Speaker</u>				
Q Whe	3:32 ere/auto/last ti	me	250	Н	a	n	S
			W1	A	Afternoon/home		
		330			Chipped paint/dented		
		495			thief/blonde/30's		

c. Any time a person other than the original persons indicated in the continued "Q" and "A" period speaks, the counter number, person speaking, and a few key words must be noted. This is especially important with objections.

	<u>Time</u>	Counter #	<u>Speaker</u>				
Q	3:50 Yesterday/worke	ed	499	Н	a	n	S
			W2	A	No/it was/Friday		
	3:55 Objection/Leadin	ng	546	В	e	a	u

5. Colloquy

At times there may be extensive colloquy between two persons, and it may be difficult to log each exchange. This is especially true when attorneys are arguing about an objection or some other legal point. Use the same format used with continued "Q" and "A" in this instance.

<u>Time</u>	Counter #	<u>Speaker</u>	
	134	Hans	How/acres/place
		Beau	No/further
			Visit/place
			Problem/time

This example applies only when the exchange is between two persons. Any time there are more than two person speaking, the abbreviations of each individual should be marked in the log along with as many key words as the operator is able to write down.

At times the discussion will be moving so quickly that it will be difficult to write down key words. In this event, the most important logging element is the individuals' names in the order in which they have spoken. During "fast" discussions, it is advisable to write down the speaker's abbreviation and the first words of the attorney or judge who is speaking to aid the transcriber in keeping track of the exchange.

6. Interruptions

There will be occasions the judge will interrupt one of the attorney's examinations and ask a few questions of the witness. This usually occurs when the judge wants to clarify something and should be logged as follows:

	<u>Time</u>	Counter #	<u>Speaker</u>				
Q	1:45 What day/say		225	Н	a	n	S
			W2	A	Monday		
		245	J		Was that 24 days?		
			W2		No/28		

7. Interpreters

When the court is using an interpreter, the interpreter is sworn in. Log only what the interpreter says in English. If the person being interpreted to says something in English, it should be logged as well.

8. Objections

Mark all objections in the log. Write down the counter number, attorney abbreviation, and either "objection" or "obj". The basis of the objection should also be noted such as "hearsay", "irrelevant", etc. Judges will respond differently to objections.

9. Guttural Utterances

Guttural utterances such as "uh-huh" or "uh-uh" may be marked on the log as such if the attorneys or judge fail to clarify the record. However, **this should not become a common practice**. The operator is encouraged to ask the judge to instruct the witness to answer with a yes or no response.

10. Off-Record Conversations

There will be occasions when conversations from people at the counsel tables are picked up on tape. If this should happen, a notation should be made in the log. The attorneys should be instructed to move away from the microphones when they are conferring off the record.

11. Exhibits

It is important to clearly note on the log each time an exhibit is identified, admitted/received, rejected, or withdrawn. Clearly mark the exhibit number and particular status as indicated by the judge. In some courts exhibits are marked for identification prior to trial. In other courts, the court recorder is responsible for marking exhibits during the trial. Ordinarily, one of the attorneys states, "I would like to have this document (or this exhibit) marked for identification." At this point, the operator would note in the log that an exhibit was marked for identification. Below is an example:

<u>Time</u>	Counter #	Speaker
10:03	293	PX 22 (Glasses) - marked
12:20	599	DX 29 (Letter) - admitted or received

Sometimes the identification of a document may not be this clearly indicated, or a judge will admit several exhibits at once. The operator must pay close attention to the proceedings. If the log is unclear, the operator may need to verify the identification with the court clerk or deputy court clerk after the court session is closed or get a list of exhibits before or after the proceeding.

Objections or arguments by the attorneys may be stated regarding the admissibility of exhibits. The judge will make his/her ruling on the admissibility of the exhibit and may say, "PX 1 will be admitted into evidence at this time," etc. Again, the operator will need to note on the log that the exhibit was admitted into evidence.

See also Michigan Trial Court Case File Management Standards, Component 20, pages 30 and 31 for standards on receipting and storing exhibits.

12. Special Terms and Proper Names

The operator must always note in the log the initial use of any special term or proper name for which the spelling will need to be verified. There may be many of these terms or names used in a technical, medical, or drug case. When possible, the operator should ask the attorneys to supply a list of names and terms prior to the court session. **Incorrectly spelled terms or names should never appear in the log**.

The operator is responsible for verifying the spelling of these special terms or proper names at the time of the proceeding. Most spellings can be verified by the individual who mentioned the terms or names. The operator should approach the person (such as an expert witness or the attorney) during a break in the court proceedings. If the person is not available, check with the keeper of the exhibits. If the term or phrase is one used by a foreign speaking person and it is to be included in the record in the foreign language, the best source for the correct spelling is the interpreter.

13. Bench and Sidebar Conferences

If a conference is off-the-record, the operator should make certain to record the judge announcing that it is off-the-record. The recording equipment should then be turned off. Note the counter number where the recording was interrupted and indicate next to the counter number that an off-the-record conference occurred at that point and the time it occurred. When the conference is over, the recording equipment should be turned on and logging resumed.

If a conference is on-the-record, it must be recorded and logged. The operator should indicate in the log when a conference is on-the-record. The following are the steps in recording and logging an on-the-record sidebar or bench conference.

a. Note the counter number at the beginning of the conference and identify the event in the log.

- b. The operator must log all bench conference and keep the headphones on. Make certain that the judge's microphone is suitably close to all speakers.
- c. Note on the log the name of each person who speaks at the bench conference, and as thoroughly as possible, indicate what they say. The operator will not be able to log counter numbers if s/he is away from the recording equipment. Therefore, transcribers will need to rely exclusively on the log. All speakers will be recorded through a single microphone onto a single channel, and the transcriber will be more dependent on the log for identifying the speaker. **Remember that all voices tend to sound the same when whispered,** so write their name (abbreviation) and the first words they say in order to identify the speaker.
- d. The judge's microphone should be repositioned after the conference ends if it was moved. The operator should note the counter number at which open-court proceedings resume, and indicate to the right of the counter number that proceedings have resumed.
- e. Resume normal recording and logging procedures.

14. Audiotape and Videotape Sources

Attorneys may on occasion play audio or videotaped materials during the course of the proceedings. In such instances, the operator should follow these procedures:

a. Audiotape or Videotape Recorded

If the playback of the audiotape or videotape is to be recorded:

- 1) Mark the counter number and note on the log "videotape (or audiotape) of _____ played in court."
- 2) Move a microphone to a position near the speaker through which the recorded material will be played.
- 3) Log as much as possible to help the transcriber with speaker and content identification.
- 4) Mark on the log the counter number at which the playback of the audiotape or videotape concludes, note that the playback concluded, reposition the speaker microphone, and resume normal recording and logging procedures.

b. Audiotape or Videotape Not Recorded

If the playback of the audiotape or videotape is not to be recorded:

- 1) Log the counter number preceding the playback of the audiotape or videotape.
- 2) Make a note describing the material played back and turn the recording equipment off.
- 3) When the playback of the audiotape or videotape is completed, make certain that the recording equipment is turned back on and resume logging.

15. In-Chambers Proceedings

Mark on the log the counter number and time at which the in-chambers proceeding begins and identify the proceeding to the right of the counter number. Identify all parties and attorneys present for the conference at the beginning of the log. The operator must be particularly conscientious in noting counter numbers and key words and phrases for each speaker. Several speakers will use one or two channels and the transcriber will be dependent on the log for correct speaker identification.

Make certain to note the counter number at the end of the proceeding and the time the proceeding concluded in the log.

16. Telephone Conversations

Telephone conversations should be fed into the courtroom or chambers through a speaker box. The microphone should be placed next to the speaker. Log the counter number and the time at which a telephone conversation begins, and identify the person in the log. For example, "phone call between Judge Benjamin and Defense Attorney Rebecca Wilson regarding . . .". Frequently, the operator will not know the subject matter of a telephone call before the conversation starts. This information should be provided in the log as soon as possible after a conversation ends.

If more than two persons are involved in a telephone conversation, ask each party to identify him/herself before speaking. It is crucial to note the counter number corresponding to each change of speaker. The operator may need to remind people to speak one at a time.

D. In-Court Playback of Testimony

There are a variety of circumstances where the operator may be asked to play back testimony or some other portion of the audiotape record. Most frequently, playback will be requested in open court. Discussion by an attorney and the judge over an objection to a particular question may result in a request to play the question back. In such instances, the operator's ability to quickly locate the question for playback will depend on the precision of the operator's log. The operator's goal should be to locate and play back requested portions of testimony as quickly as possible. This is another reason logging is so important.

To play back a certain portion of the proceedings:

- 1. Stop recording equipment.
- 2. Note index counter number on log sheet.
- 3. Determine from the log the location of the starting index number for the requested testimony.
- 4. Rewind tape until index counter is at location of the requested playback.
- 5. Play requested portion.
- 6. Mark on log sheet that specific portion of the recording was played.
- 7. Advance tape in fast forward mode to just past the index number where recording was interrupted.
- 8. Return equipment to record mode.
- 9. Inform judge or attorneys they can resume. The operator should not let the attorneys, judge, or witness begin the proceeding before the recording equipment is in the record mode and the operator is ready to continue logging.

9-04 APPROVED AUDIO RECORDING EQUIPMENT

The following audio recording equipment is approved for use in Michigan courts.

1. PCS - ACR 7B (formerly GYYR)

The ACR 7B is approved to record at a speed of 2.4 centimenters per second only.

2. Lanier - Advocate II, III and IV

The Lanier models are approved to record at a speed of 2.4 centimeters per second only.

3. Lanier Advocate V

This model is approved only with balanced microphone cable and XLR input connectors and only to record at a speed of 15/16 IPS.

4. Sony - BM 145, 146 and 246

The Sony BM 145 is approved to record at both 4.8 centimeters per second and 2.4 centimeters per second.

The Sony BM 146 is approved to record at both 2.4 centimeters per second and 1.2 centimeters per second.

The Sony BM 246 is approved to record at a speed of 2.4 centimeters per second only.

5. Dictaphone "For the Record"

Dictaphone Corporation's "For the Record" *Digital Testimony Management System*, is available in three configurations: Client Server, Single Court, Portable Laptop